INSLAW II

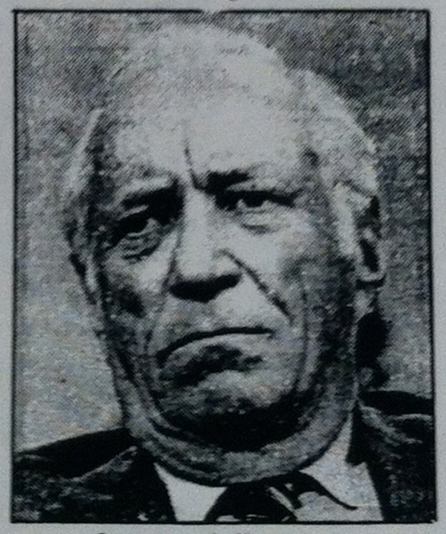
LEGAL TIMES
LAW AND LOBBYING IN THE NATION'S CAPITAL
PART 1 OF 2 PARTS
MONDAY, MAY 16, 1988 . VOL. X, NO. 49 • $4.00

PR|IW|IB-01



# INADMISSIBLE

**Dickstein Pressured CBS . . .** **Leonard Garment, David Shapiro,** and **Seymour Glanzer,** three senior partners at D.C.'s **Dickstein, Shapiro & Morin,** made repeated calls to CBS producers and network executives last week in an unsuccessful effort to kill a CBS News report that was highly critical of the firm. The story involved Dickstein's representation of D.C.-based Inslaw Inc., a client dropped by Dickstein, allegedly because of Justice Department pressure. The story also aired Inslaw's charge that Dickstein fired **Leigh Ratiner,** the lead counsel in Inslaw's suit against the department. "They were threatening in the oily way Washington lobbyists threaten," says **Martin Koughan,** the CBS producer who worked on the scathing two-part report. Garment acknowledges he made several calls about the report but claims he was only clarifying his own statements. Garment wasn't happy that CBS wanted to quote him as denying Inslaw's allegations. "What I said is it was total baloney, and there's a difference," Garment says. Dickstein partners say they cannot respond in further detail to Inslaw's allegations as long as they are bound by attorney-client privilege.



**Leonard Garment**

PRINTED-02

# Company's Big Break Becomes a Headache

## After Landing a $10M Contract with the Justice Dept., Software Maker Inslaw Ends Up in Bankruptcy Court

By Melinda-Carol Ballou

WASHINGTON, D.C. — Most high-technology vendors seeking a big break would think that winning a $10 million contract with the Justice Department would guarantee success and financial security. But for Inslaw President Bill Hamilton, that turned out not to be the case.

In 1982, the Justice Department wanted to install Promis, Inslaw's case-tracking software, in 94 of its U.S. attorneys' offices.

Less than three years later, however, in February 1985, the dream seemed shattered, when Hamilton filed for bankruptcy.

What happened?

As early as June 1983, Hamilton said, a "whistle blower" in the Justice Department said that Associate Attorney General J. Lowell Jensen and his longtime acquaintance, Ed Meese, had a plan that if Meese became attorney general, they would install Promis software in every litigation office in the Justice Department and award a "sweetheart contract" to their friends. An investigation by the General Accounting Office of Congress found no such relationship with Inslaw.

"No one could have conceived that they were going to steal the software from us," Hamilton said.

When the Justice Department later took the software and then failed to pay the bills, Inslaw turned to the bankruptcy court for help and eventually sued the Justice Department.

Judge George Bason Jr. of the Bankruptcy Court for the District of Columbia finally sorted the whole thing out and found that the Justice Department acted "in bad faith, vexatiously, in wanton disregard of the law and of the facts, and for oppressive reasons—to drive Inslaw out of business and to convert, by trickery, fraud and deceit, Inslaw's Promis software."

He eventually awarded Inslaw $6.8 million in licensing fees plus about $1 million in legal fees.

Bason described the situation as being analogous to "th buyer who has put in order for a stripped-do of a car. . . . The dealer i im provides another ca the-line model, which agrees to test drive. Wha tice Department] has d case is to drive off with t the-line model, while re ther to accept the lesser

BIG BREAK, *Page*

### INSLAW'S RUN-IN WITH U.S. JUSTICE DEPARTM



| | |
|---|---|
| March 1982 | Justice Department signs $10 million contrac Inslaw for |
| April-August 1982 | Inslaw plans to market enhanced version of Justice Department appears not to object. |
| November 1982 | Justice Department claims contract gives it th rights to enhanced version of Promis. |
| April 11, 1983 | Inslaw provides Justice Department with req programs and documentation. Hadron Chairm allegedly offers to buy Inslaw. |
| July 1983 | Justice Department suspends $250,000 paym Inslaw; a month later Inslaw still delivers pro |
| February 1985 | Justice Department terminates Inslaw's contr 74 branches. Inslaw files for bankruptcy. |
| September 1987 | U.S. District Judge Bason rules that Justice D ment tried to "drive Inslaw out of business |
| January 1988 | Judge Bason awards Inslaw $6.8 million in re active licensing fees and $1 million in legal fe |

## INSLAW'S RUN-IN WITH U.S. JUSTICE DEPARTMENT



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| **March 1982** | **Justice Department signs $10 million contract with Inslaw.** |
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| April 11, 1983 | Inslaw provides Justice Department with requested programs and documentation. Hadron Chairman Laiti allegedly offers to buy Inslaw. |
| **July 1983** | **Justice Department suspends $250,000 payment to Inslaw; a month later Inslaw still delivers programs.** |
| February 1985 | Justice Department terminates Inslaw's contract for 74 branches. Inslaw files for bankruptcy. |
| **September 1987** | **U.S. District Judge Bason rules that Justice Department tried to drive Inslaw out of business.** |
| January 1988 | Judge Bason awards Inslaw $6.8 million in retroactive licensing fees and $1 million in legal fees. |

# BIG BREAK

*Continued from Page 141*

agree to pay for the better model."

In an interview, Bason said, "I guess one warning would be that people need to be cautious when dealing with the federal government, and I regret to say that."

Bason did not win reappointment after the Inslaw case and has been unemployed since January. When asked if he had any regrets, he said, "I definitely do regret losing my job, but I don't have any regrets about the decision I rendered."

Over a period of time, a total of three participants lost their jobs.

The web is still so tangled that even now the Justice Department calls the case "most complex." As might be expected, the department is appealing Bason's ruling.

A U.S. Senate subcommittee is now taking depositions and laying the groundwork for an investigation.

## In the Beginning

The odyssey began in March of 1982 when the Executive Office of U.S. Attorneys (EOUSA) entered into a $10 million contract with Inslaw to install a minicomputer version of Inslaw's Promis software (developed on DEC's VAX 32-bit architecture) in 20 of the U.S. attorneys' larger offices and a word processing version in 74 of the smaller offices.

One month later, Inslaw notified the Justice Department of its intention to market an enhanced release of its software, developed under private funding, for which it claimed proprietary rights.

Brick Brewer, a fired employee of Inslaw who had taken a position as Inslaw project manager for the Justice Department, protested that Inslaw did not have proprietary rights to the software.

Inslaw's Hamilton described the events over the next months as a "spontaneous eruption of unrelated contract disputes."

These "were used as a pretext for withholding millions of dollars in order to force us into bankruptcy and [to force] the auction of our software so that it could be purchased by another company that could then contract with the Department [of Justice]," he said.

In November 1982, Inslaw received a demand from Peter Vidinieks, a contract officer and Brewer's employee at EOUSA, claiming that the Justice Department had the rights to the enhanced version of Promis.

Eventually—in April 1983—as a "temporary accommodation," Inslaw agreed to modify the original contract and provide the software.

Hamilton alleged that in that same month, he received a phone call from Dominic Laiti, the chairman of Hadron, a company controlled by Earl Brian, who is well known to Meese. Laiti has denied making the call.

According to Hamilton, however, Laiti "told me that his company intended to become the leading vendor for law enforcement and court agencies in this country, that they had very high-level political connections with the Reagan administration that would make it possible to achieve this goal. . . . After I said that I wasn't interested in meeting, he said that 'we have ways of making you sell,' at which point I ended the conversation," Hamilton said.

Inslaw was later informed that beginning in July 1983, the Justice Department was suspending nearly $250,000 in monthly payments to the company.

In February 1985, the Justice Department terminated the Inslaw contract for the 74 smaller offices, which had been generating nearly $300,000 a month in revenues for Inslaw. By this time, the Justice Department had withheld nearly $1.77 million in payments to Inslaw. The company declared bankruptcy later that month.

According to Bason's ruling, the Justice Department—not content with acquiring the software without paying for it—tried to liquidate the company by pressuring a trustee to change Inslaw's status from a Chapter 11 bankruptcy to a Chapter 7 liquidation.

In 1987, the situation attracted the attention of Sen. Christopher Dodd Jr. (D-Conn.), who recommended an investigation.

"Sen. Dodd . . . at first figured that it was a bureaucrat out of control, a middle-level management problem, and then determined that it was a lot more serious than that, and decided to get the Senate Subcommittee [on Investigations] to take over," said one Senate staffer.

Sen. Sam Nunn (D-Ga.), chairman of the Permanent Subcommittee on Investigations (the committee that conducted the Iran-contra hearings), is currently taking depositions and will begin hearings on the Inslaw case next month, a staffer said.

One of Inslaw's attorneys, Michael Friedlander, said the Justice Department "has the right to use the product in the 44 offices that currently have it, but they are obligated under the judgment to pay us."

Inslaw is also now receiving funding from IBM to port its software to OS/2. IBM has agreed to pay for reorganization and development costs. ■

# BARRON'S MAILBAG

*Continued from Page 11*

received for the underlying basket of stocks.

Needless to say, the price bank proposal would make trade executions more difficult for index futures traders. This would decelerate price movement and add stability to the market.

In addition, wringing the profit out of program trading would eliminate traders who (perish the thought) manipulate the market to distort index future premiums, solely for the purpose of executing program trades.

Also, the price-band limitation would, by necessity, cause futures trading to be halted when, due to an order imbalance or over cause, the underlying index isn't updating. This would prevent situations like those of Oct. 19 and 20, when futures traded at huge discounts from the apparent stock indexes.

My proposal may be lacking in some ways. I hope, however, that it engenders more practical suggestions from other *Barron's* readers than the complete ban urged by Donald Regan.

EMIL G. PESIRI
San Francisco

* * *

*To the Editor:*

I read about program trading and its negative effect on the markets, but no one was complaining about market efficiency as we headed toward last summer. It's obvious that anyone complaining now, during a declining market, longs for the good old days.

If you go up hard you come down hard; it's elementary, my dear Watson. Let's all be thankful that we went up hard first, so to speak.

Before we use program trading as a whipping boy, we need to determine if it was created out of greed or simply as an efficient tool to use in an ever-changing and complex market.

DAVID BELSITO
Newburgh, N.Y.

* * *

FRISCH'S RESULTS
*To the Editor:*

I am writing to clarify the report of our third quarter earnings in the Up & Down Wall Street column of May 16. It is important to know that Frisch's third quarter is the weakest of its fiscal year and normally counts for less than 10% of annual earnings. Third quarter earnings as a percentage of total earnings amounted to 6% in fiscal 1986 and 9.7% in fiscal 1987.

The column also failed to note that while pre-tax earnings declined 24% in the third quarter, there was an increase in pre-tax earnings of $996,377, or 30%, for the first 40 weeks of the current fiscal year.

The changes in federal income tax rates over the past three fiscal years have caused wide swings in reported earnings. It was necessary to increase our estimated income tax rate during the third quarter a year ago, which resulted in a 61% tax rate for that quarter. Some people in the Washington establishment might like to maintain such a rate! It does prove the importance of reading Management's Discussion and Analysis of Financial Condition and Results of Operations in addition to the raw numbers printed in the statements.

LOUIS J. ULLMAN
Senior Vice President-Finance,
Frisch's Restaurants Inc.
Cincinnati

* * *

DOG-GONE MAD
*To the Editor:*

I was reading, with interest, May 2's "Going for the Gold," by Diana Henriques, when I ran across a quote from Ian C. MacDonald, of Credit Suisse in New York: "... To be honest, while they [retail coin dealers] talk about cleaning up their image, the average coin outlet right now is a dingy, raggedy old shop full of shotguns and German shepherd dogs . . .'"

We have been in coins, with shops in and around the Houston area for the past 35 years. I'd advise MacDonald I've failed to see shotguns in any of the shops in this area, although I'm sure there may be one or two guns kept for protection. And I have not seen any German Shepherds at all.

Of course, over the past years, we have been visited in our shops at various times by a collie named Lady and a black Labrador named Nickie.

CHRIS JOHNS
Universal Numismatic Co.
Houston

* * *

DIAL-AN-INDICATOR
*To the Editor:*

I have found a new regional economic indicator—the "new" telephone area code rule.

I was speaking to a client in Palm Beach who told me that her city would be having a new area code. I thought, "Oh no, look out, South Florida." Everyplace I have resided that added a new area code had very little growth remaining.

Palm Springs converted to 619 in November 1982 and my house value peaked about then. The area outside Houston added 409 in March 1983 near its economic peak. And New York City added 718 for Brooklyn, Staten Island and Queens in September 1985.

MARK A. FORNEY
Vice President-Investments
Prudential-Bache
New York City

***Those who buy our reader's theory won't be surprised if Michael Dukakis's "Massachusetts Miracle" deflates. In July, a swath of the Bay State, west of Boston, also is getting a new area code, 508.—Ed.***

THE JOYS OF HIGH YIELDS
*To the Editor:*

The stock market speculator buys high-priced volatile stocks; the investor buys low-priced stable stocks with extra-high dividend yields. When the bottom falls out of the market—as it did last October—the speculator takes a licking, while the investor's paper losses are minimal, if any.

Before the October 1987 crash, I was fully invested in low-priced, high-yield utility and industrial stocks such as Duquesne Light, Detroit Edison, Athlone Industries, and such, each with a yield of better than 9%. All my stocks are now selling near to, or above, their pre-crash prices. Meanwhile, the steady flow of dividend checks has helped keep me calm, cool and satisfied.

JAMES MARATTA
Fairfield, Conn.

* * *

SLANTED?
*To the Editor:*

Maggie Mahar's April 4 article contained incorrect and slanted statements.

On page 38 appears the statement "... A month before writing the notes, Tyson was removed from his position in the Executive Office for U.S. Attorneys, and he and his secretary were exiled to Justice's Immigration and Naturalization Service . . ."

Neither I nor my present office manager (then executive assistant) are now, nor have we ever been assigned to the Immigration and Naturalization Service. The position which I accepted in March 1987, chief administration hearing officer (which I continue to hold), is one which I actively sought as a desirable career move after many years of administrative duties.

My position, which offers an opportunity for substantive legal work, was a newly created position required by the Immigration Reform and Control Act of 1986.

My assistant, who has worked for me for many years, voluntarily joined me in this new assignment on a temporary basis for almost seven months to assist in setting up my new office before deciding to accept reassignment.

Your author referred to a letter I wrote to former Deputy Attorney General Lowell Jensen, a copy of which I provided to Deputy Attorney General Arnold I. Burns, my superior. By carefully choosing her words and selecting portions of my deposition testimony favorable to her slant, the author misrepresented my purpose in writing the letter. My letter to Jensen was prompted by an article in the March 29, 1987, Washington Post. That article, among other things, contained strong and unmistakable implications that I had informed William Hamilton, president of INSLAW Inc., that Jensen, while serving in the Department of Justice, was biased against INSLAW. The assertion and implications in that article were false. I felt it my duty to a respected former associate and superior to make that known to him.

Your author unfairly accused me of "protesting too much" in my effort to point out inaccuracies in the Washington Post article. The inaccuracies in your April 4 article are so flagrant that I am compelled to point them out.

WILLIAM P. TYSON
Springfield, Va.

**Letters should be addressed to: The Editor, Barron's, 200 Liberty St., New York, N.Y. 10281. To be considered for publication, correspondence should bear the writer's name, address and telephone number. All letters are subject to editing and abridgement.**

* * *

ONE VIEW OF THE UTILITIES
*To the Editor:*

From Robert M. Bleiberg's various editorials on the subject, it might be assumed that he has been designated the keeper of the flame (the Dow Jones Utility Average and its forecasting abilities), and is hoping that it won't burn out before he can alert the bucolic sheep.

Interest rates move markets. The DJU reflects these changes in rates due to [utilities'] great use of borrowing to sustain growth and profitability.

At this point, a chart of the DJU reveals a continuous downtrend, while the Dow Industrials and Dow Transports are on rising cycles. From February, when the DJU started this divergence, it has continued down. In the week of April 22, it broke an important low of January, thus confirming a continuation of the bear market.

Having pursued further analysis using moving averages, I've verified this stance.

At the present time, it might be right to rally around the flame and be true observers.

IRVING LEHREN
New York City

* * *

THE BIG THREE
*To the Editor:*

An update on the three big lies:

"Your check is in the mail."

"I was out of the stock market by Oct. 19."

"I never voted for Ronald Reagan."

MIKE SPANIOLA
Royal Oak, Mich.

* * *

PLACID NO MORE
*To the Editor:*

My wife ordinarily is placid and composed and generally at peace with the world. However, the other day she blew her top and lost her cool at *Barron's*.

Why? Because she likens reading your publication to a squirrel seeking nourishment from an intransigent black walnut. She believes that your magazine is the most awkward and clumsy of its genre. She insists that within two minutes of tracking an article of several pages, the magazine is a total shambles. Trying to restore it to order is an exercise in futility.

Possessing a positive nature she suggests that you either:

(A) Adopt a format in which there are two sections—the first containing the editorial commentary etc.; the second, the statistics. Or (B) Staple your magazine with two, or preferably three, staples.

CALVIN HUNT
St. Paul, Minn.

* * *

NO BIG GAIN,
NO BIG PAIN?
*To the Editor:*

Re: The May 9 "Early Warning of Recession" article.

One year after the current phase of slight but steady economic improvement began, I told my family, friends and acquaintances that, as long as the percentage of factory capacity used to produce goods (I do not include services) remains between about 78% and 82%, we do not have to fear a boom or a bust.

As long as the above-mentioned statistic remains within the limits prescribed, we will have no boom and, consequently, no recession, depression or bust.

Booms help a few people; the inevitable bust that follows always hurts many.

GEORGE P. DE FOREST
McMinnville, Ore.

* * *

THE BETTING LINE IN VEGAS
*To the Editor:*

There has been much fascination with the similarity of the Crash of '87 and the Crash of '29. Here's something else to ponder:

The Smoot-Hawley tariff bill, which many people believe was instrumental in causing the Great Depression and keeping stock prices depressed, was signed into law by President Hoover on June 17, 1930.

Being a believer in the periodicity of things and the planets' mysterious effect on human affairs, I'm keeping my powder dry until June 17, 1988. If the current trade bill working its way through Congress has not been signed by President Reagan by this time, I'm turning into a bull. Remember, folks—June 17.

MORT SHLENSKY
Las Vegas

* * *

GOING FOR THE GOLD
*To the Editor:*

Jerry Helzner's "Philadelphia Story" (April 25) was very interesting. Give him a gold star. Ditto for Rainer Manthey's "Buffetted in Hamburg" in the same issue.

GEORGE MUEDEN
New York City

PR/IW/IB-04

# LETTERS

## Forecaster Taking Cramer's Evaluation With Grain of Salt

To the editor:

As you can see, *The Elliott Wave Theorist* is ranked No. 1 [among 26 financial advisory services] in "average profit per trade" and in "percent of closed trades profitable" for short-term trading in the U.S. stock market so far in 1988. Please note that 23 of the 26 services showed losses. Please also note that *The Elliott Wave Theorist* in 1987 was ranked No. 3 for "average profit per trade" and No. 1 for "percent of closed trades profitable." These facts are reported by an unbiased independent source [*Commodity Traders Consumer Report* of Sacramento, Calif.].

These rankings should help demonstrate that James Cramer's "Street Talk" column in the Feb. 29, 1988 issue of *Legal Times* ["Not-So-Hot Line Deserves Only a Cold Shoulder," Page 14] was inaccurate to the extent that most of it was merely invented, conveying the opposite of the truth. Its mean spirit makes the writer's motives transparent, and they are not those of an objective reporter. That your readers are poorly served by this kind of writing should be of minor concern to you compared to the possibility that some day a subject of one of his columns may take libel seriously.

*Legal Times* is committed to accurate and balanced reporting. If you believe that an article is unfair or inaccurate, please write to:

Editor
Legal Times
1730 M Street N.W.
Suite 802
Washington, D.C. 20036

If a correction is required, it will be published in a prominent place in the newspaper.

Even as laymen, you might question whether your financial writer, who is willing publicly to recommend a short sale in a hamburger chain stock because he looked at the "salt content" in the food (which, one might venture, was little different as the stock rose over eight times in value during the bull market) or a purchase of gold stock because Alan Greenspan might "twitch," appears to be burdened with some bizarre preconceptions about what makes stocks go up and down. Such naive preconceptions are the hallmarks of a stock-market loser, and can lead to a venomous prejudice against demonstrably successful methods of anticipating market trends.

**Robert R. Prechter Jr.**
Editor
*The Elliott Wave Theorist*
Gainesville, Ga.

*James J. Cramer responds:*

*That* The Elliott Wave Theorist *could finish so high in the hot-line rankings with all the wrong short-term calls Robert Prechter has made since the crash only proves my point all the more that these hot-line gurus don't deserve the attention they receive. Old "Dow 3000" has become quite a bear these days, which makes me cautious about my current bearish stance. But sometimes these technicians can be right for the wrong reasons.*

*It's obvious that facts don't matter to Prechter. Why else would he criticize my Homestake pick, which after I recommended it at 14, jumped to 19 that same week—an astounding 35 percent increase in five days. I won't bother to annualize that rate of return.*

*He must know something I don't about McDonald's. That stock went down like a stone after I recommended shorting it—a drop of 10 percent while the market rose half that much.*

*I do like Prechter's combative stance, however, and I'm glad he takes time out from his charts to get some fundamental input from my column.*

## Garment: We Didn't Try to Stifle News Report on Inslaw

To the editor:

Under the heading "Dickstein Pressured CBS," your "Inadmissible" column for May 16 [Page 3] asserts that I, together with two other partners of Dickstein, Shapiro & Morin, attempted "to kill" a story about the firm.

For the record, the charge is wholly untrue. We did not try to kill the CBS report. Any such attempt would be a mark of the grossest inexperience in dealing with network news. We did try to get the story as straight as possible. To this end, I read to Leslie Stahl and to her producer, Martin Koughan, and discussed with CBS News President Howard Stringer portions of my sworn deposition in which I said, among other things, that the Inslaw charge that the attorney general asked me to force Leigh Ratiner out of my firm was "absolutely untrue" (p. 5); that my only substantive contact with the Inslaw case was to arrange a settlement conference with the Department of Justice at the request of the clients and Mr. Ratiner (p. 6-8, 9); and that I "conveyed no messages calling for the ejection of Leigh Ratiner from the firm, either by direct request, nuance, indirectly, in any manner, shape or form, or in any language known to mankind. Zero. It would be unseemly and unthinkable." (p. 9).

When Ms. Stahl said she intended to confine my response to "Garment denied," I protested and spent half the day persuading CBS to at least convey the intensity of my denials by using the phrase "It's total baloney."

The story passed to *Legal Times* by CBS producer Koughan about threats and other efforts to kill the CBS story is flat wrong.

**Leonard Garment**
Dickstein, Shapiro & Morin
Washington, D.C.

PR[IN]IB-05

The New York Times

NEW YORK, THURSDAY, AUGUST 25, 1988

# Report Faults Justice Dept. on Ethics Policy

WASHINGTON, Aug. 24 (AP) — The Justice Department, unlike other Federal agencies, does not require employees to file confidential financial disclosure reports and has failed to periodically evaluate its ethics program, Congressional investigators said today.

The General Accounting Office said formal ethics training had not been provided to everyone at the department, either. While conceding that the Justice Department's ethics program "contains many of the basic elements required by law and regulations," the G.A.O. said that "certain required elements are missing."

**Report Requested in December**

The report was requested last December by Representatives William D. Ford of Michigan and Gerry Sikorski of Minnesota, both Democrats. Mr. Ford is chairman of the House Post Office and Civil Service Committee, and Mr. Sikorski is chairman of a subcommittee on human resources.

Mr. Sikorski said at the time that his panel had observed that the department "has failed to maintain an effective system of preventing ethics violations" by employees.

He cited questions about stock holdings by Edwin Meese 3d, then the Attorney General, in seven regional telephone companies, and about a letter in June 1987 from Mr. Meese's wife, Ursula, to a Federal judge in Tennessee requesting leniency for a family friend who was awaiting sentencing.

## 'Certain required elements' are missing, investigators say.

At the Justice Department, ethics programs are handled by the various divisions. Allegations of ethical misconduct are reported to the Office of Professional Responsibility, which reports to the Attorney General.

As is the case with all high-ranking officials in the Government's executive branch, top people at the Justice Department must file public financial disclosure forms under the 1978 Ethics In Government Act.

At other agencies, many civil servants are required to file confidential financial disclosure forms that show assets, investments and a spouse's job. These forms are a vital tool in spotting potential conflicts of interest.

Justice Department employees, however, are an exception.

The report said, "This deviation from the practice elsewhere in the Government is based on Justice's view that there has been no legal authority to require confidential reports since January 1979 when the Ethics in Government Act of 1978 took effect."

Justice officials said they would require the reports when the independent Office of Government Ethics, which monitors the act, submitted regulations. Those rules have yet to be filed in final form, but a Government ethics official said they are expected to be ready by fall.

A telephone call to the Justice Department seeking comment on the Government Accounting Office report was not returned immediately.

The report recommended evaluation of the department's "standards of conduct regulations, financial disclosure system and post-employment enforcement system."

The report was released as Attorney General Dick Thornburgh assumes command of the department.

Mr. Thornburgh succeeded Mr. Meese, whose ethical conduct is still under review by the department's Office of Professional Responsibility.

Mr. Meese's activities were investigated by James C. McKay, an independent counsel, who concluded that Mr. Meese may have broken tax and conflict-of-interest regulations. Mr. McKay said there was not enough information to prosecute, and Mr. Meese said the report vindicated him.

PR|IN|IB-06

# Inslaw Tries to Shake AT&T From Panel

By LEIGH RIVENBARK

Washington, D.C., software firm Inslaw Inc., on the verge of completing a $2.5 million deal with IBM Corp., is repeating its allegations that another corporate giant, AT&T Co., has contributed to its financial troubles. Inslaw attorneys are attempting to remove AT&T from a position of influence in the software company's bankruptcy proceedings.

Last week Inslaw asked the U.S. Bankruptcy Court to remove AT&T from Inslaw's unsecured creditors committee because, as Inslaw's attorneys wrote, "from AT&T's perspective, it would be far better if Inslaw . . . were forced into liquidation."

Inslaw president William Hamilton said the company wants AT&T off the creditors' committee before Inslaw files its reorganization plan. For months Inslaw has alleged that AT&T illegally broke a contract with Inslaw and then pushed its way onto the creditors' committee, although it was not listed as an Inslaw creditor.

Former Bankruptcy Court Judge George Bason Jr. granted Inslaw's request to take depositions from AT&T employees, but AT&T protested. Bason's departure from the bench has left the question of depositions open for more than four months while the participants await the appointment of a new judge for the bankruptcy case.

Bason had also ruled that Department of Justice officials intentionally drove Inslaw into bankruptcy in order to liquidate the company and steal its case-tracking software. He awarded Inslaw $6.8 million in damages, but that decision is being appealed by Justice.

Inslaw's attorneys are now considering whether they have a case against AT&T, Hamilton said.

However, AT&T should not be on the unsecured creditors' committee because that committee would examine any reorganization plan Inslaw submits, Hamilton said.

"Inslaw may well have a multi-million-dollar asset available to its creditors, i.e. an action against AT&T," Inslaw's filing said. "[The] potential action against AT&T creates an irreconcilable conflict of interest for AT&T."

Within two weeks Inslaw will file for approval of a $2.5 million IBM loan and software development agreement, attorney Michael Friedlander said. The reorganization plan should follow within 45 days, Friedlander added.

"We don't comment on tactics used by our adversaries in legal matters," AT&T spokesman Burke Stinson said. "We don't usually make a practice of fighting fire with fire." AT&T is still weighing how to respond to Inslaw's request that it leave the creditors' committee, Stinson said. ◀

The New York Times

NEW YORK, MONDAY, JUNE 13, 1988

PR|IN|IB-07

# Report on Meese Inquiry: 'Unflattering' Conclusions

By PHILIP SHENON
Special to The New York Times

WASHINGTON, June 12 — Even though an independent prosecutor's report is not expected to accuse Attorney General Edwin Meese 3d of criminal wrongdoing, Justice Department officials say it will almost certainly provide strong evidence that Mr. Meese was insensitive to the appearance of impropriety.

The report is expected to be made public later this month. After its release, the Attorney General faces an internal disciplinary review that, according to Justice Department officials, could result in a departmental recommendation to President Reagan that Mr. Meese be dismissed.



Camera Press

Edwin Meese 3d

The report by the indendent prosecutor, James C. McKay, is a culmination of more than a year of investigation.

Law-enforcement officials say it will detail several instances in which Mr. Meese's conduct, although not criminal, may have violated Federal ethics rules, including a 1965 Executive Order that prohibits actions that "create the appearance of using public office for private gain."

The order, signed by President Johnson, also bars Government employees from creating the appearance of "preferential treatment to any organization or person, impeding Government efficiency or economy, losing complete independence of impartiality" or "affecting adversely the confidence of the public in the integrity of the Government."

Mr. McKay is expected to cite several instances in which Mr. Meese may have created the appearance of impropriety, including the following:

¶Mr. Meese's involvement in a $1-billion Iraqi pipeline project in which E. Robert Wallach, his lawyer and close friend, had a financial stake.

¶The Attorney General's ties to the Wedtech Corporation, a Bronx-based military contractor that has been accused of attempting to bribe public officials in exchange for their assistance.

¶Mr. Meese's investment of

*Continued on Page A17, Column 1*

# port on the Meese Inquiry: Speculation Leans to 'Unflattering' Conclusion

Continued From Page A1

about $55,000 with a California financial adviser who was a consultant to Wedtech.

### Special Justice Office

Mr. McKay's report will be forwarded to the Justice Department's Office of Professional Responsibility, which is responsible for investigating allegations of wrongdoing by Federal law-enforcement officials.

In investigations of other department officials, the director of the office, Michael E. Shaheen Jr., has demonstrated a willingness to stand up to his Government superiors.

If he does not clear Mr. Meese, Mr. Shaheen could recommend a range of penalties, from a mild rebuke to dismissal, and career officials in the Justice Department say they would not be surprised if Mr. Shaheen recommended later this year that his superior, the Attorney General, be disciplined and perhaps dismissed.

### Victim of 'Lynch Mob'

In a series of recent interviews, part of a broad public relations campaign clearly intended to blunt the impact of whatever criticism is contained in the independent prosecutor's report, Mr. Meese has insisted that he is the victim of a "lynch mob" that includes Washington reporters and liberal lawmakers.

In a television interview late last month, the Attorney General said he would welcome Mr. McKay's report. "If the facts are accurately portrayed, it should set the record straight, as I've said before, and show that Ed Meese is not guilty of any wrongdoing," the Attorney General said.

Yet, according to Federal investigators, Mr. Meese will be sorely disappointed if he is expecting Mr. McKay to issue an exoneration.

"The report will not draw broad conclusions about Meese," said one investigator. "But anybody who reads it closely will see that the evidence, when drawn together, makes for anything but a flattering portrait."

Because of the complex chronology and overlapping cast of characters in the McKay investigation, it is sometimes difficult to keep the allegations against Mr. Meese separate.

## Pipeline Project And Old Friend

According to Federal investigators, the most serious allegations against Mr. Meese involve the Iraqi pipeline project. Sponsors of the pipeline, which was never built, hoped it would carry oil from Iraq through Jordan to the Gulf of Aqaba.

Among the chief proponents of the project was Mr. Wallach, a San Francisco personal injury lawyer who had been a close friend of Mr. Meese's since the two men attended law school at the University of California. Mr. Wallach had been retained to assist Mr. Meese in his bruising battle in 1984 and 1985 to be confirmed as Attorney General.

### Insurance Plan Sought

Mr. Wallach, who often boasted to business associates of his friendship with the Attorney General, is linked to virtually all of the allegations of wrongdoing leveled against Mr. Meese in recent years.

In 1985, Mr. Wallach sought Mr. Meese's help in obtaining the Reagan Administration's assistance for the pipeline plan. Because of the danger that Israel might view the pipeline as a threat and destroy it, Mr. Wallach and his client, Bruce Rappaport, a secretive Swiss financier with close ties to Israel, wanted the United States to help set up an insurance plan for the project.

In May 1985, Mr. Meese put Mr. Wallach in touch with Robert C. McFarlane, who was then the White House national security adviser.

The introduction alone raised ethical questions.

In May, according to public documents, Mr. Meese was still barred from any official involvement with Mr. Wallach. The Attorney General made that clear in a May 24 memo notifiying his aides that he was prohibited from dealings with Mr. Wallach until the lawyer had been paid for his assistance to Mr. Meese in the confirmation fight.

### Unusual Letter Sent to Peres

It was not until June 7, after Mr. Meese had already introduced Mr. Wallach to Mr. McFarlane, that a Federal court approved a plan for the Government to pay Mr. Wallach.

Mr. Meese's involvement in the pipeline project deepened in October 1985 when he sent an unusual letter to Shimon Peres, who was then the Israeli Prime Minister, recommending that Mr. Peres bypass the State Department and deal directly with Mr. McFarlane at the White House.

The letter was unusual if only because it is the Secretary of State who would normally deal with such a sensitive foreign policy matter.

According to investigators, Mr. McKay has spent much of the last several months attempting to determine whether Mr. Meese received any sort of illegal payment from Mr. Wallach in exchange for his assistance in promoting the pipeline project.

Much of Mr. McKay's effort has centered on a $150,000 payment to Mr. Wallach by Mr. Rappaport in August 1985, in the midst of Mr. Meese's involvement in the pipeline project. The money was put into a stock-trading account that pooled investments for several people, including Mr. Wallach and Mr. Meese.

Mr. Meese's lawyers have denied that the Attorney General knew anything about the $150,000 or that he benefited in any way from the payment by Mr. Rappaport. According to law-enforcement officials, Mr. McKay has found no evidence or insufficient evidence to refute the Attorney General's account.

The officials say Mr. McKay has also been unable to show that Mr. Meese was aware of a plan in 1985 to make potentially illegal payments to the Israeli Labor Party in exchange for the party's assistance with the project.

Mr. Wallach made mention of the plan in an "eyes only" memo to Mr. Meese in September 1985 in which he asserted that Israel, in exchange for its help, would receive $65 million to $70 million, "a portion" of the money going directly to the Labor Party. The Attorney General has said that he has no memory of reading the memo, one of scores that Mr. Wallach had sent him in recent years.

The Foreign Corrupt Practices Act of 1977 makes the Attorney General repsonsible for prosecuting American citizens or companies that attempt to bribe foreign officials. Mr. Meese could have faced charges if prosecutors could demonstrate that he knew of a bribery plot and did nothing to stop it.

No evidence has ever been made available to indicate that payments were ever made to Labor Party officials, and they have vigorously denied the allegation.

Although investigators say Mr. McKay has insufficient evidence to show that a crime was committed, they say the prosecutor's report could demonstrate repeated violations of the 1965 Executive Order.

Mr. Meese's repeated assistance to Mr. Wallach could, for example, violate the Executive Order's prohibition on the creation of an appearance of favoritism.

# Richardson Assails Meese

Elliot L. Richardson, Attorney General in the Nixon Administration, sharply criticized Attorney General Edwin Meese 3d yesterday in a graduation address, calling him "an anti-role model."

In a telephone interview after his address to the graduating class of the Pace University School of Law in White Plains, N.Y., he said, "I think his continuation in office is a disservice to the Department of Justice, the Administration and the party."

In his speech to the 286 graduates, on integrity, Mr. Richardson said:

"Some things can be taught through experience. Others should be known. One of them is sensitivity to the feelings and interests of others.

"This sensitivity is markedly lacking in our present Attorney General. He seems not to grasp the fact that his responsibility is to establish and observe standards transcending the minimum requirements of the law. We hear a lot about 'role models' nowadays. For you who are about to assume the practice of law, he is an anti-role model."

Mr. Richardson resigned as Attorney General rather than dismiss the first Watergate prosecutor, Archibald Cox.

# Aquiry Began With Wedtech

The independent prosecutor's investigation of Mr. Meese did not begin with the pipeline proposal, however.

Mr. McKay's interest in the Attorney General originally stemmed from allegations involving the Wedtech Corporation, the scandal-ridden military contractor that has been linked to schemes to pay millions of dollars in bribes to gain Government contracts.

And in those allegations, Mr. Wallach was again a key figure. He is now under indictment in New York on Federal racketeering charges in the Wedtech case, accused of influence peddling.

In 1981 and 1982, Mr. Wallach sent more than a dozen memos to Mr. Meese, who was then a counselor to President Reagan, urging his support for Wedtech's efforts to obtain a lucrative no-bid contract to build small engines for the Army. Mr. Wallach has said he was acting at the time as an unpaid adviser to the company.

### 'Fair Hearing' Urged

In 1982, Mr. Meese did intervene, urging that Wedtech get a "fair hearing" on the Army project. A White House meeting was called by Mr. Meese's deputy, James E. Jenkins, to resolve a dispute over the $32 million contract; it was eventually awarded to Wedtech.

In a memo to Mr. Meese in the fall of 1982, Mr. Jenkins said that "your personal go-ahead to me saved this project."

In a report last month, a Senate panel, the subcommittee on Oversight of Government Management, found that Mr. Meese, by his involvement in the Wedtech contract, had violated a White House policy that prohibited officials from becoming involved in certain Government procurement matters.

The policy, stated in an October 1981 White House staff manual, barred employees from contact with "any procurement officer about a contract in which he has a personal financial interest or in which a relative, friend or business associate has a financial interest."

### Damaging Statements Cited

Lawyers for Mr. Meese have denied the allegation, arguing that the October 1981 policy did not apply to Mr. Meese because, at the time of Mr. Meese's intervention, Mr. Wallach was not working for Wedtech. It was not until December 1982, the lawyers said, that Mr. Wallach became a paid consultant to Wedtech.

A number of Wedtech executives have pleaded guilty to charges of attempting to bribe public officials in exchange for their assistance involving Wedtech contracts.

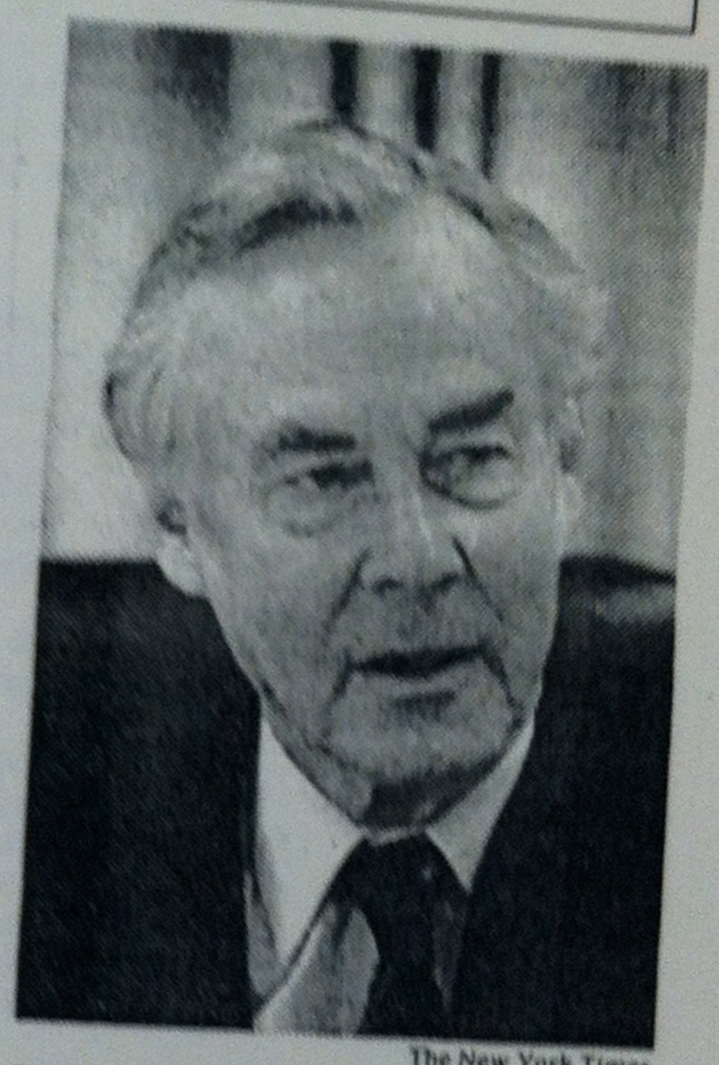
In exchange for leniency, they have agreed to cooperate with prosecutors, and they have made repeated damaging statements about Mr. Wallach and his ties to Mr. Meese.

### Wedtech Head Testifies

According to defense lawyers in the case, the plea bargains raise serious questions about the truthfulness of the Wedtech officials.

In a court appearance last month, Wedtech's former president, Fred Neuberger, testified that in 1985, Wedtech paid $300,000 to Mr. Wallach to help defray his costs in defending Mr. Meese during the confirmation battle on Capitol Hill. Asked in the testimony whether he believed that Wedtech was, in effect, paying for Mr. Meese's legal representation, Mr. Neuberger replied, "That was my thought."

The testimony from Mr. Neuberger and others has led investigators to question whether Mr. Meese received any sort of illegal gratuity, such as payment of his legal fees, in exchange for his assistance to Wedtech. Mr. McKay, the investigators say, has been unable to demonstrate any such connection, and Mr. Meese has repeatedly denied wrongdoing.



The New York Times

James C. McKay, the independent counsel investigating Attorney General Edwin Meese 3d.

# Investments — Latest Focus

In recent months, much of the special prosecutor's investigation has centered on Mr. Meese's involvement in an investment fund linked to Mr. Wallach and through him to Wedtech.

In 1985, the Attorney General, at Mr. Wallach's recommendation, decided to turn over most of his investments, worth about $55,000, to W. Franklyn Chinn, a San Francisco financial adviser who was working as a consultant to Wedtech and was later named a director of the company. According to Congressional investigators, Mr. Meese has acknowledged that he knew at the time that Mr. Chinn had been asked to advise Wedtech.

Mr. Chinn generated nearly $35,000 in profits for Mr. Meese, who has said that he was unaware of what Mr. Chinn did with the money.

### One-Day Stock Trades

Virtually all of the profit came from highly speculative, one-day stock trades. An investigation by the Senate oversight subcommittee found that on several occasions, Mr. Chinn invested amounts of money for Mr. Meese that were greater than the balance in his ac-

count. In effect, the panel found, Mr. Chinn was making large, potentially improper loans to Mr. Meese.

The Federal Office of Government Ethics has already determined that Mr. Meese acted outside the law in investing the money with Mr. Chinn, who has been indicted along with Mr. Wallach in the Wedtech case.

The ethics office found last year that financial arrangement, which has been described by Mr. Meese as a "blind" limited partnership, did not meet the requirements of the Ethics in Government Act for blind trusts, nor was it submitted for approval by the ethics office, as required.

The ethics act, although it carries no criminal penalties, can subject victims to administrative sanctions. The purpose of a blind trust — an arrangement in which investments are made and administered without the investor's knowledge — is to prevent the use of a public office for private gain.

**Second Investment Questioned**

There were ethical questions about another of Mr. Meese's investments. He has said that when he turned over his assets to Mr. Chinn for investment, he intended to include about $10,000 worth of stock that the Meese family held in the seven regional Bell telephone companies.

The shares apparently never got to Mr. Chinn; Mr. Meese has said that he lost the certificates.

In the meantime, however, Mr. Meese did not excuse himself from the Jusitce Department's supervision of the breakup of the American Telephone and Telegraph Company, raising questions of whether his participation in the breakup might have been influenced by his stock holdings.

Mr. Meese later obtained a White House waiver that permitted him to be involved in discussions about the telephone company breakup.

# New inquiry surfaces in Meese role in Inslaw case

By BONAR MENNINGER

In an apparent reversal, the Department of Justice is again investigating what role, if any, Attorney General Edwin Meese may have played in the Inslaw Inc. affair.

The renewed interest comes several weeks after Acting Assistant Attorney General John Keeney publicly stated that a special prosecutor's investigation into Meese's involvement in the case was not warranted.

Justice officals declined to comment last week on the apparent contradiction.

As previously reported, Keeney's exoneration of Meese came despite the fact that Justice Department investigators did not interview three principals in the case.

One of those principals, former Inslaw attorney Leigh Ratiner, last week said he was contacted May 25 by investigators in the Justice Department's Office of Professional Responsibility.

The investigators told him allegations surrounding Meese's role in the Inslaw matter had been referred to that office by the Criminal Division's Office of Public Integrity.

The investigators told him allegations surrounding Meese's role in the Inslaw matter had been referred to that office by the Criminal Division's Office of Public Integrity.

Inslaw has alleged that Ratiner was fired by the Washington law firm of Dickstein, Shapiro and Morin at the behest of Meese, following a conversation between Meese and Dickstein partner Leonard Garment.

Ratiner had represented Inslaw in the early stages of the company's much publicized lawsuit against the Department of Justice, which alleged department officials conspired to drive the Washington software firm out of business.

Last September, District of Columbia Federal Bankruptcy Judge George Bason Jr. ruled in Inslaw's favor and awarded the company about $8 million in damages. The decision is being appealed.

Garment, who represented Meese in the Attorney General's confirmation hearings in 1984, has denied any role in Ratiner's departure from Dickstein Shapiro.

Questions about Meese's role surfaced after Meese acknowledged in sworn testimony last summer that he had spoken with Garment about the Inslaw case in October 1986 — the same month Ratiner inexplicably announced he was leaving the law firm.

Ratiner has refused to discuss the circumstances surrounding his departure from Dickstein, Shapiro, citing a confidentiality agreement with his former employer.

Nonetheless, he was strongly critical of Justice investigators' failure to interview him or Inslaw owners Bill and Nancy Hamilton before Keeney announced that further scrutiny into Meese's alleged role was not warranted.

Ratiner said last week that representatives of the Office of Professional Responsibility, an in-house ethicial committee, contacted him May 25, seeking his cooperation in their investigation of the "Meese-Garment matter."

"I told them I was not interested in cooperating unless they could show me they were doing a serious and independent investigation, and not another cover-up," Ratiner said.

He said the representatives of the Office of Professional Responsibility told him they would be back in touch, but as of last week, had not called him back.

Two other principals overlooked in the department's previous internal investigation of the matter, the Hamiltons, last week said they had not been contacted by the Office of Professional Responsibility.

The Associated Press reported recently that a separate internal investigation by Justice's Office of Public Integrity has been launched into possible perjury by current or former Justice employees in connection with their testimony in the Inslaw trial last summer and fall.

The Office of Professional Responsibility functions as an inspector general within the Department of Justice, with power to convene a grand jury and refer cases for criminal prosecution or administrative action.

The Office of Public Integrity performs essentially the same function, but has authority over all government employees and agencies.

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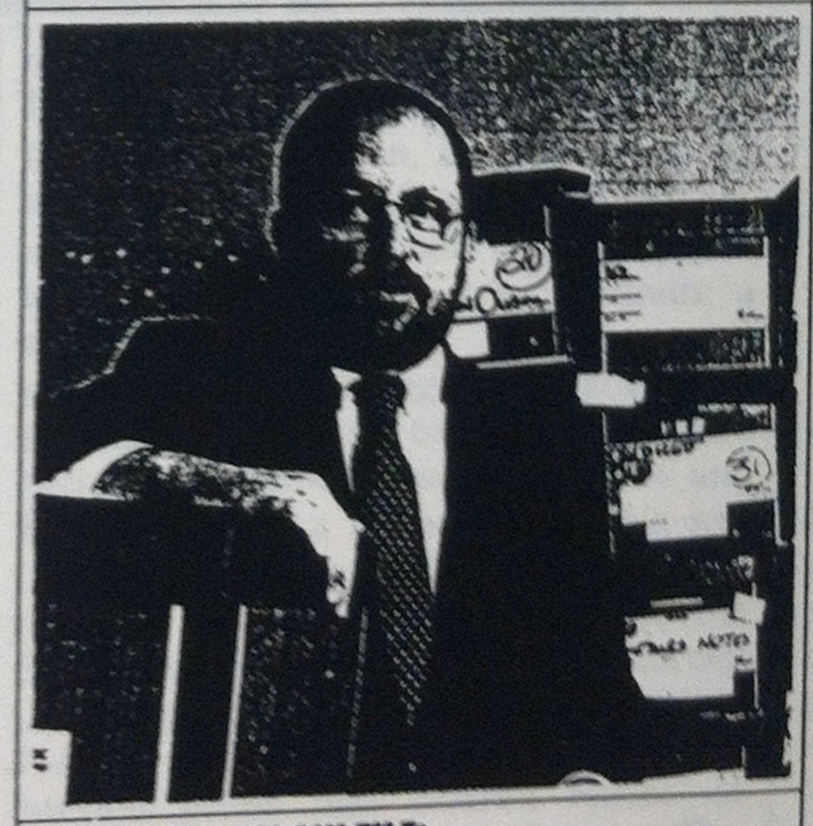
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JUSTICE DEPT.

# DID JUSTICE CONSPIRE IN A COMPANY'S COLLAPSE?

## Congress may take up the convoluted, bizarre Inslaw affair later this month




"I wasn't paranoid enough. I was a supreme believer in the system."

William A. Hamilton, founder and president of Inslaw Inc., a tiny, Washington-based software company, spoke softly but with almost evangelistic intensity, adding emphasis with quick, hard chops of his hands on a document-strewn table. "I thought it was just an aberration. But it turned out that the system had become corrupt," he continued, his voice rising. "It was a tremendous perversion right at the top."

Hamilton is waging a bitter battle against the U.S. Justice Dept., with which Inslaw had a software contract. He claims that a cabal of Justice officials, whose motives remain unclear, drove his company into bankruptcy in February, 1985. But Hamilton, 47, a former National Security Agency officer with the tenacity of a pit bull, fought back. Still running Inslaw under a Chapter 11 reorganization, he has outhustled and outmaneuvered Justice at almost every turn. "He turned this into a holy war and caused us great grief," admits a senior Justice official.

**HEAVY ALLIES.** Among the Justice conspirators, according to Hamilton, were Attorney General Edwin Meese III and Earl W. Brian, a friend of Meese's and the new chairman of United Press International. If Meese were involved, the Inslaw affair could dwarf the Attorney General's other alleged malfeasances. Justice recently announced that an internal probe had cleared Meese of any wrongdoing involving Inslaw. The department has denied the existence of a conspiracy, claiming that the Inslaw matter is a simple contract dispute. And Brian denies the conspiracy charge.

Whether or not Hamilton is right, the Inslaw story is far more than a contract dispute. It is a convoluted and often bizarre tale with enough bureaucratic intrigue and hints of skulduggery to delight a national convention of paranoids.

Hamilton has enlisted a formidable array of allies and sympathizers. They include a bevy of well-placed Washington attorneys, most prominently former Attorney General Elliot L. Richardson, and several congressmen, including members of the Senate permanent subcommittee on investigations, which is looking into Inslaw and may hold hearings later this month. The media, notably CBS, which recently ran a lengthy two-part report on its evening news, has given his theories wide play.

Hamilton's biggest victory was a fa-

Congress may take up the convoluted, bizarre Inslaw affair later this month




"I wasn't paranoid enough. I was a supreme believer in the system."

William A. Hamilton, founder

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runs. The two sides bic

# THE INSLAW SAGA

**1973**

▶ William Hamilton and an associate found Inslaw as a not-for-profit company specializing in case-management computer software for law-enforcement agencies

**MARCH, 1982**

▶ The Justice Dept. awards Inslaw, now a for-profit corporation, a $9.9 million contract to install case-management systems in 94 U.S. Attorneys' offices

**JULY, 1983**

▶ Justice begins suspending some payments to Inslaw on the grounds that Inslaw's performance has been inadequate. The funds withheld eventually total $1.8 million

**FEBRUARY, 1984**

▶ Justice decides to terminate a portion of Inslaw's contract because of delays in the systems-installation schedule. This action further reduces Inslaw's cash flow

**FEBRUARY, 1985**

▶ Inslaw files for reorganization under Chapter 11 of the bankruptcy laws. Some Justice officials allegedly seek to have the reorganization converted to a liquidation

**JUNE, 1986**

▶ Inslaw initiates a lawsuit against Justice for $30 million, alleging that the department wrongfully appropriated its proprietary software and forced it into bankruptcy

**SEPTEMBER, 1987**

▶ A bankruptcy judge rules in favor of Inslaw. He says Justice 'stole' Inslaw's software through 'trickery, fraud, and deceit' and 'drove Inslaw out of business'

**FEBRUARY, 1988**

▶ The judge orders Justice to pay Inslaw $7.8 million in damages and legal costs. Justice says that it intends to file an appeal of the judge's ruling against the department

**MAY, 1988**

▶ Responding to allegations that Attorney General Edwin Meese was part of a conspiracy to bankrupt Inslaw, Justice announces that an internal investigation has cleared Meese

vorable decision last September in a $30 million complaint he had filed against Justice. A bankruptcy judge castigated the department's "outrageous, deceitful, fraudulent" conduct and said it had sought to "drive Inslaw out of business." In February the judge awarded Inslaw $7.8 million in damages and fees. Justice is appealing the ruling.

Initially, Hamilton believed that the alleged conspirators were Justice officials with grudges against Inslaw. But in recent months, Hamilton has advanced an expanded thesis that Inslaw's bankruptcy was engineered not only by department insiders but also by business friends of Meese. The conspiracy's chief goal, Hamilton says, was to force Inslaw to sell out to a company controlled by a Meese crony, which would then have the inside track on a big piece of a $200 million office-automation contract to be awarded by Justice this year.

Hamilton has assembled much circumstantial evidence, and serious high-level wrongdoing may eventually be established. But an extensive inquiry by BUSINESS WEEK casts doubt on the conspiracy theory. Although one of Meese's business friends may have been interested at one point in acquiring Inslaw, there is no evidence that he helped cause Inslaw's bankruptcy. Nor is there much direct evidence of an organized conspiracy within Justice. Inslaw's collapse stemmed largely from Hamilton's lackluster management, a criticism Hamilton denies.

**VENDETTA?** Yet Hamilton's feelings of paranoia are far from unfounded. Inslaw was probably victimized by some Justice employees who held biases against the company, chiefly a former Inslaw attorney who oversaw the Inslaw contract for Justice. Hamilton's aggressive counterattack helped foster widespread animosity toward Inslaw within Justice that probably developed into something close to a vendetta. That vendetta may have been partly responsible for the following curious events, which have lent credence to Hamilton's conspiracy theories:

- The bankruptcy judge who ruled in favor of Inslaw was later denied reappointment.
- The lawyer who handled Inslaw's suit against Justice was asked to resign. His firm's other attorneys include former Meese counsels Leonard Garment and E. Robert Wallach.
- A Justice employee was forced to resign after he told Hamilton of an apparent attempt by Justice officials to liquidate Inslaw following its bankruptcy filing.
- Two federal bankruptcy officials recanted sworn testimony favorable to Inslaw. Justice is said to be investigating them and other officials for evidence of perjury.

Among the many ironies of the Inslaw saga is that the company was initially a creature of the Justice Dept. Hamilton, then a management consultant, had founded Inslaw in 1973 to develop Prosecutor's Management Information System (PROMIS), the first software program that enabled prosecutors to computerize case files. As a not-for-profit corporation, Inslaw was awarded funds to expand PROMIS by the Law Enforcement Assistance Administration (LEAA), a Justice agency that aided local law enforcers. Inslaw became one of LEAA's most widely praised projects.

**'SHAM' DISPUTES.** When LEAA was closed down in 1981, Inslaw became a for-profit company and launched an ambitious expansion. Its cornerstone was a $9.9 million, three-year, cost-plus contract from Justice in 1982 to install PROMIS in 94 U.S. Attorneys' offices. With a unique product and a seemingly vast market, Inslaw seemed a sure thing.

Yet Inslaw's relations with Justice rapidly deteriorated. The contract became plagued with delays and cost overruns. The two sides bickered over who was at fault. Justice began withholding payments, then terminated one portion of the contract. Eventually, Inslaw ran out of cash.

Hamilton claims the contract disputes were "shams" to further the conspiracy, which was guided by four principals:

- **Edwin Meese.** Hamilton believes that Meese, who became Attorney General in 1985, must have approved the scheme.
- **Earl W. Brian.** Brian, a venture capitalist, served with Meese in Ronald Reagan's California Cabinet. In 1983, according to Hamilton, Dominic A. Laiti, chief executive of Hadron Inc., a small technical services company closely linked to Brian, offered to buy Inslaw. Hamilton says that when he declined, Laiti replied that Hadron had good political contacts and "had ways of making you sell." Laiti says he doesn't recall the conversation and denies he ever would have made those comments to Hamilton.
- **D. Lowell Jensen.** The San Francisco district court judge served with Meese in a California district attorney's office. Jensen was sponsored for a Justice post in 1981 by Meese, then White House counselor, and later became Deputy Attorney

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**FEBRUARY, 1988**
▶ The judge orders Justice to pay Inslaw $7.8 million in damages and legal costs. Justice says that it intends to file an appeal of the judge's ruling against the department

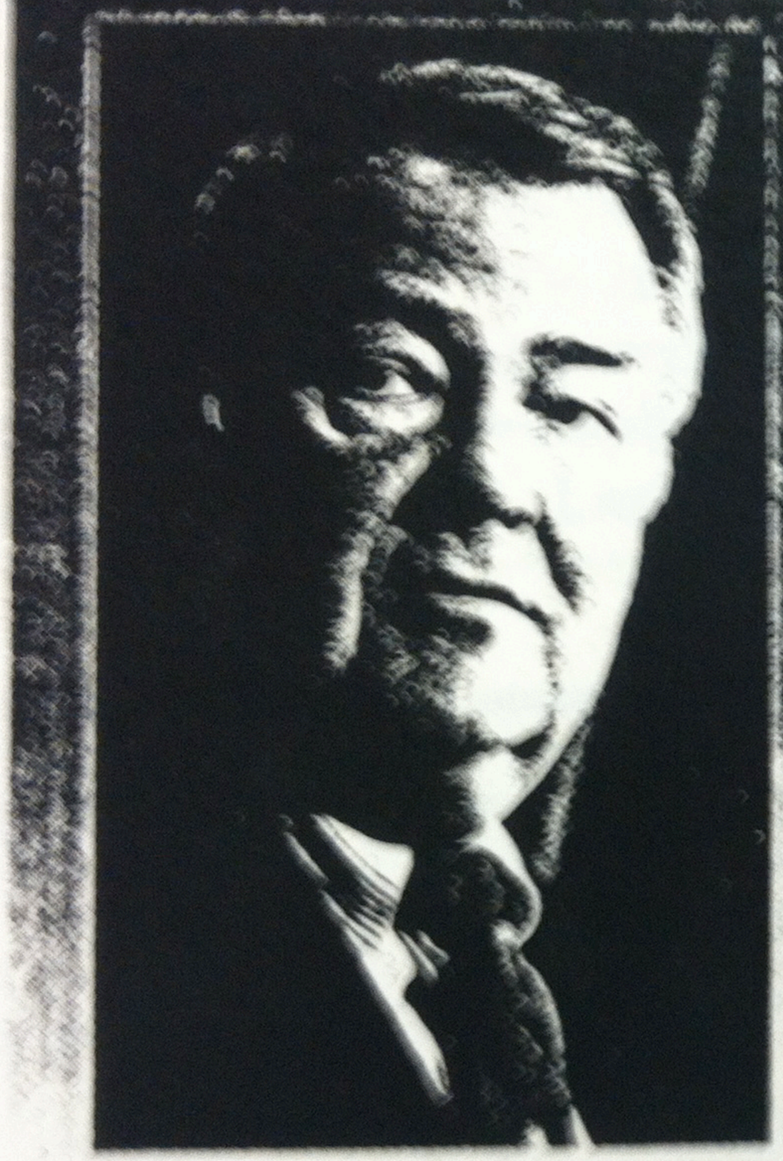
**MAY, 1988**
▶ Responding to allegations that Attorney General Edwin Meese was part of a conspiracy to bankrupt Inslaw, Justice announces that an internal investigation has cleared Meese

Attorney General.

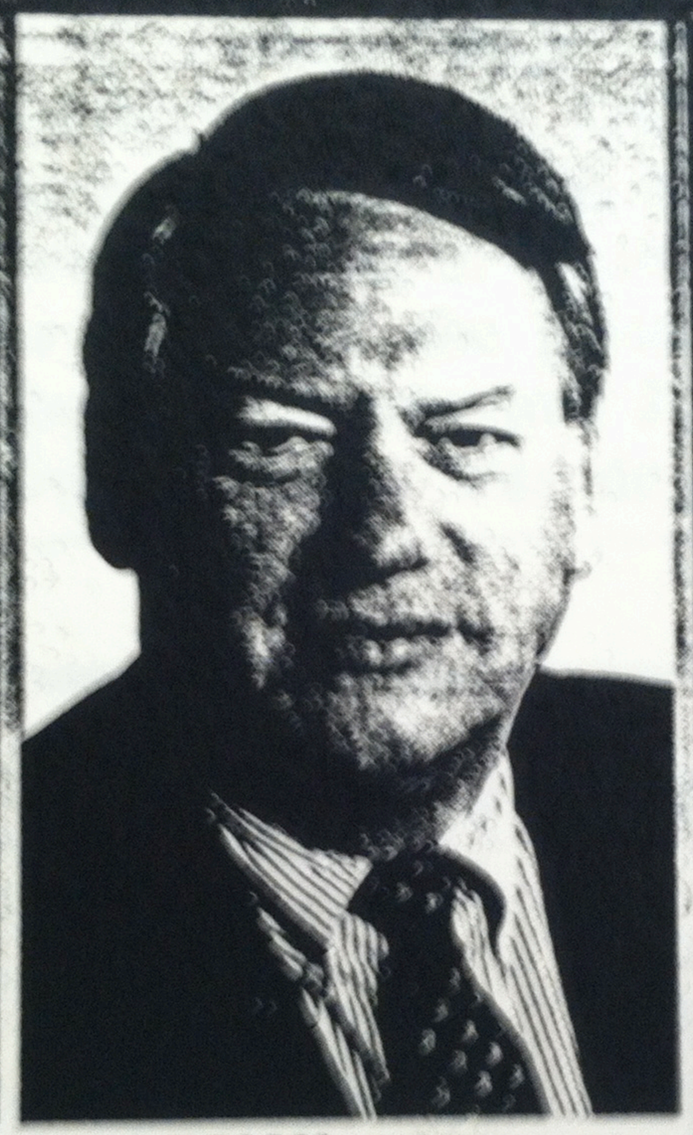
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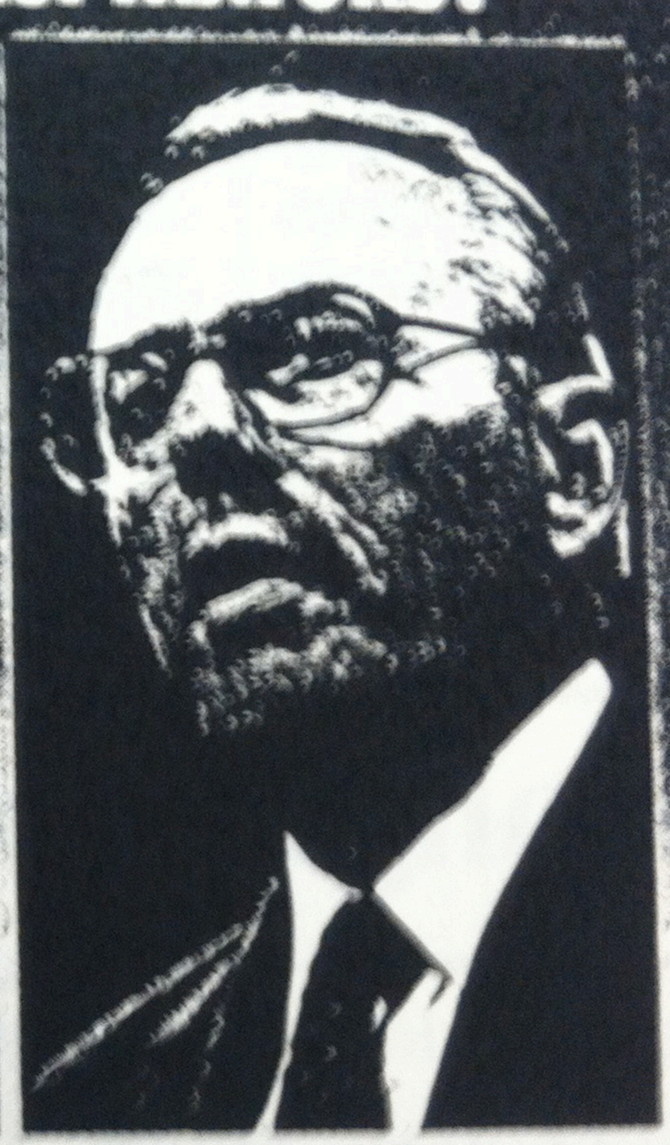
## LINKED TO INSLAW—BUT CONSPIRATORS?



EDWIN MEESE



EARL BRIAN

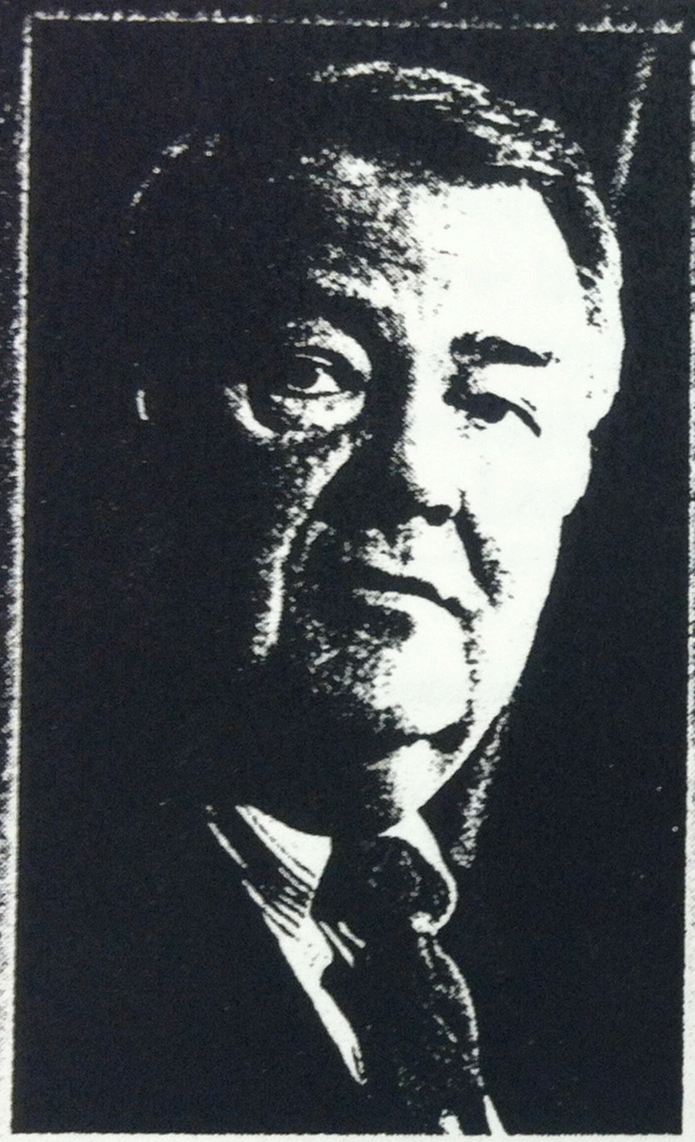


D. LOWELL JENSEN

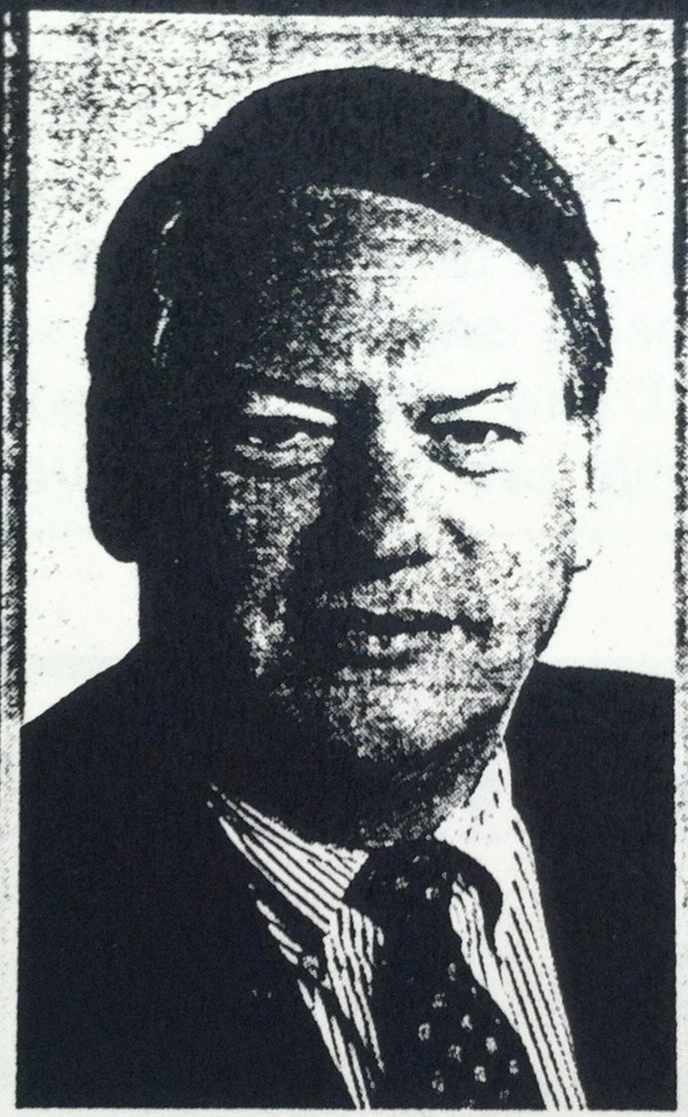
Hamilton is maintaining that Inslaw's woes were engineered not only by Justice Dept. bureaucrats but also by such friends of Meese as venture capitalist Brian and former Deputy Attorney General Jensen. But the evidence is circumstantial at best

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General, the No. 2 post, in 1983. Hamilton thinks Jensen was Brian's conduit to Justice. Jensen has denied any impropriety. Brian says he never met Jensen.

■ **C. Madison "Brick" Brewer III.** A former Inslaw attorney whom Hamilton asked to resign, Brewer later became Justice's project manager for the Inslaw contract. Brewer denies any conspiracy.

The Meese-Brian connection with Inslaw is as tenuous as it is tantalizing. Brian occasionally boasted of his White House contacts, say former Hadron employees. They feel that Hadron, in bidding for Inslaw and acquiring another company with an existing Justice contract, anticipated more Justice business once Meese became Attorney General.

If Hadron had such designs, which Laiti and Brian deny, it apparently never followed through on them. Hadron did obtain a renewal last fall of its Justice contract. But there is no evidence that Brian or Hadron influenced Justice policy on Inslaw or made another bid for Inslaw once Inslaw went bankrupt. Hadron, further, lacked the capability to participate in Justice's big automation project and, says Laiti, did not submit a bid. Even if Hadron had gotten its hands on PROMIS, the alleged conspiracy's prize, it wouldn't have helped Hadron much. Feeling PROMIS had become outdated, Justice nearly halted further installation two years ago. It plans to develop a new version.

Lowell Jensen and Brick Brewer were deeply involved with Inslaw. But were they, as Hamilton thinks, leaders of an organized conspiracy? Such a scheme necessarily would have involved numerous senior Justice officials over several years. The evidence suggests that Justice's behavior derived from a more diffuse and benign set of factors.

**'POISON THE WELL.'** Jensen, who promoted software that competed with PROMIS before he joined Justice, was skeptical of Inslaw's product. Though Brewer denies any bias, evidence suggests he harbored an animus against Hamilton. Justice and Inslaw share responsibility for the contract's problems. But Brewer was in a position to shift the onus to Inslaw and influence superiors to take a harder line on the company.

"You probably could have had more aggressive and independent oversight of Brewer," concedes a senior Justice official. "He was in a position to poison the well against Inslaw. And Lowell's attitude probably gave Brewer greater opportunity to abuse Hamilton."

Hamilton, though, must shoulder much of the blame for Inslaw's financial straits. Hamilton was a typical entrepreneurial visionary who had trouble running a company. At LEAA, Inslaw had a reputation among some project officers for not meeting budgets and deadlines. But that didn't seem to matter much. At LEAA, grant money flowed easily to favored grantees such as Inslaw.

Although Hamilton insists otherwise, former associates say he couldn't adjust to the bottom-line disciplines of the for-profit world. According to a 1985 study by a company interested in acquiring Inslaw, Hamilton's company had no cost accounting, no effective budgets, and no formal contracting procedures. "In general," the report said, "it is safe to say that Inslaw has not been managed."

Further, because Hamilton was reluctant to give up much equity interest to outside investors, Inslaw was badly undercapitalized. The company never turned a profit. It closed an ill-advised European venture in 1983 after losing nearly $1 million. Hamilton funded such projects with advance contract payments, and Inslaw fell in the hole.

Warning that the company might go under, Hamilton insisted that Justice release withheld contract payments and award Inslaw new contracts. Justice bureaucrats were unmoved. Complaints were rising from U.S. Attorneys about problems with PROMIS installations. "It wasn't my mission to save private companies by writing checks," says former Assistant Attorney General W. Lawrence Wallace. "In my opinion, Inslaw just wasn't performing."

Justice ignored frequent complaints by Inslaw of departmental bias. "We got tired of their B.S.," says another former Justice official. "Our feeling was, 'How the hell can we extricate ourselves from this mess?' " Adds a top Justice official: "You got a terrible us-vs.-them mentality. Everybody dug in, assumed the worst about each other. The atmosphere got very poisoned."

It was this atmosphere, not the sinister conspiracy postulated by the Hamilton forces, that seems to best explain Justice's sometimes questionable actions after Inslaw's bankruptcy in 1985.

According to some evidence, Brewer and perhaps others at Justice unsuccessfully sought to convert Inslaw's reorganization under Chapter 11 into a liquidation under Chapter 7, which would have shut down Inslaw. Justice's intent, ruled George Francis Bason Jr., the bankruptcy judge who heard Inslaw's suit against the department, was to "weaken or eliminate Inslaw's ability to press its contract disputes with DOJ."

**THE OFFENSIVE.** In a sworn deposition to Inslaw last year, New York bankruptcy judge Cornelius Blackshear said he had been told by William C. White, the bankruptcy trustee then handling the case, that Thomas J. Stanton, a top Justice official, had pressured White to liquidate Inslaw. But the next day, Blackshear recanted his testimony, saying he had confused Inslaw with another case. Hamilton had been informed of Blackshear's conversation with White by a Justice employee named Anthony J. Pasciuto. After Justice learned of his contact with Inslaw, Pasciuto recanted sworn testimony and later was forced to leave. Justice denies that any pressure was exerted to liquidate Inslaw.

Justice officials in 1986 apparently supported a hostile takeover attempt of Inslaw by Systems & Computer Technology Corp., a small technology company interested in Inslaw's customer base. A takeover would have forced Hamilton out of the company. The bid failed when Inslaw's creditors refused to back it.

Justice, meanwhile, took over the PROMIS installation. It had previously as-

## LINKED TO INSLAW—BUT CONSPIRATORS?



EDWIN MEESE | EARL BRIAN | D. LOWELL JENSEN

**H**amilton is maintaining that Inslaw's woes were engineered not only by Justice Dept. bureaucrats but also by such friends of Meese as venture capitalist Brian and former Deputy Attorney General Jensen. But the evidence is circumstantial at best

PHOTOGRAPHS BY ALEX J. BERLINER, FRANK MICELOTTA, MARKEL GAMMA LIAISON



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served unlimited rights to the software on the grounds that PROMIS had been developed with federal funds. It denied Inslaw's claims, which were not fully documented, that Inslaw had made numerous proprietary enhancements to Justice's PROMIS with private funds.

**'FRAUD AND DECEIT.'** Hamilton then went on the offensive with his 1986 lawsuit. Justice underestimated Hamilton's perseverence and was badly outclassed. While the department assigned a lone attorney, Hamilton was represented by several law firms, most with impressive political connections.

To prepare the action against Justice, which alleged that the agency had misappropriated Inslaw's proprietary software, Hamilton engaged Leigh S. Ratiner of Dickstein, Shapiro & Morin. After Dickstein partner Leonard Garment represented Edwin Meese at Meese's 1984 confirmation hearings, the firm became known for high-level Justice access.

Ratiner's complaint accused Lowell Jensen of helping to cause Inslaw's bankruptcy. Because of Jensen's friendship with Meese, the suit provoked much embarrassment within Dickstein. In October, 1986, shortly after the accusations against Jensen were disclosed in a front-page *Los Angeles Times* article, Ratiner, whose status within Dickstein had been problematic, was asked to withdraw, apparently at Garment's behest. Meese acknowledged talking with Garment about Inslaw. Dickstein later dropped Inslaw as a client, and Hamilton hired Charles R. Work, a well-connected partner at McDermott, Will & Emery.

Judge Bason's decision in favor of Inslaw last September, and especially its harsh language, stunned the Justice Dept. He said Justice "stole" Inslaw's software through "trickery, fraud, and deceit." Bason, who suggested that Inslaw had been the victim of a conspiracy, ignored the effects of the poisoned atmosphere between Inslaw and Justice.

> Inslaw's collapse may be more a factor of Hamilton's poor management than of any outside skulduggery

Last January, Bason was denied reappointment to the bankruptcy bench and replaced by S. Martin Teel Jr., a Justice attorney with little bankruptcy experience who had worked on the Inslaw case. There is no evidence that Justice influenced the selection, made by the Court of Appeals. The Court did not explain its decision, but many observers think Justice's outrage over Bason's decision was a major factor.

The seemingly malign machinations, coupled with Hamilton's new Brian-Meese conspiracy theory, has fired up media interest. Hamilton, a journalist's dream source, readily disseminates elaborate background papers, which helped produce uniformly favorable press coverage. This has helped Hamilton galvanize interest on Capitol Hill.

Despite the dearth of current evidence, congressional investigators may be able to assemble the pieces of a grand conspiracy. Discharged Dickstein attorney Ratiner believes there was conspiracy. But he doesn't discount the possibility—which many observers feel is more likely—that the Inslaw saga will prove to be a setback for paranoia—"a lot of discontinuities that played together, a symphony without a conductor."

*By Chris Welles in New York*


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# BUSINESS JOURNAL

VOLUME 7, NUMBER 5

ONE DOLLAR

WEEK OF JUNE 27, 1988

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## Aggressive rent increases seen by landlords

### *Move is only 1 way owners cope with unsteady market*

By MARK HESCHMEYER

The jams that the apartment industry's largest practitioners have fallen into have forced a return to the basics for investors and likely will mean an aggressive push to raise rents in the metropolitan area.

The new deals to fund apartment construction and acquisitions are increasingly more conservative. Joint-venture ownership is spreading out the risks; developers are having to put their own profits on the line; new projects are fewer and further between; and the returns are coming from operations — not tax benefits.

Since the returns are coming from operations, apartment owners are likely to try pushing across aggressive rental increases, managers and investors said.

"There's nothing sexy anymore," said William H. Rosenberg, chairman of the Investment Group, a joint-venture real estate firm with Perpetual Savings Bank of Alexandria. "They [new deals] are just good solid investments."

Rosenberg is directing the spending of $150 million of capital raised through Shearson/Lehman/Hutton Co. The money is going into apartment projects, many in the mid-Atlantic market.

The return to the no frills approach in apartment investing is more than welcomed by many real estate investors and

See APARTMENT RENT, page 16

## Justice Dept. blasts Inslaw case verdict in appeals brief

By BONAR MENNINGER

After months of silence, the Department of Justice struck back recently in the beguiling Inslaw Inc. matter, charging a former bankruptcy judge's ruling against the agency was driven by bias and riddled with flaws.

The assertions were made in an exhaustive, 253-page department brief filed June 17 with Williams B. Bryant, a District of Columbia District Court judge scheduled to hear the government's appeal of the case.

The department's filing seeks a new trial, and in language often incredulous, at times acerbic and occasionally sardonic, presents the first detailed picture of the Justice Department's side in the controversial case since former bankruptcy Judge George Bason Jr. ruled against the agency last fall.

In his stunning decision, Bason concluded that Justice Department officials

See JUSTICE, page 19

### LATE BREAKING NEWS

**Compton comes out on top at Star**

Robert Compton has risen to the top of a trio that has been running Star Technologies Inc. of Sterling for the three months since its president resigned.

Star named Compton president and chief operating officer. Compton had shared the office of president with chairman Herbert Shaw and a director, Robert Newton. Shaw and Newton retain their other posts.

**Lewis named C&P president in D.C.**

C&P Telephone named Delano Lewis president of its Washington operations. Lewis, who had been vice president, now has responsibility for operations in the Washington metropolitan area.

Thomas Gibbons becomes chairman and chief executive.

**Ridgewell's completes buyout**

Ridgewell's Inc., the prominent Bethesda caterer, has been sold by Chicago-based Carson Pirie Scott & Co. to an employee group led by James Caufield, Ridgewell's president, for an undisclosed amount.

Financing came from American Security Bank and local investors that included officers from Oliver Carr Co., Clark Construction, Steuart Investment Co., Johnston Lemon, Temporaries Inc., Circle Management Co. and Greenwood Investment Co.

## Skewed downtown market causes investors to worry

By ALEX MONTAGUE

Developers punching out pro formas for downtown D.C. developments are finding it increasingly difficult to make projects work on a cash-flow basis. Instead they are relying heavily on foreign investors to bail them out down the line with top-dollar purchase prices, according to numerous development and finance sources.

What that means for the future of downtown development depends on whom you ask.

Some say it is nothing more than a sign that D.C. development is acquiring some of the attributes of foreign markets, which typically are much more oriented toward long-term investments and capital appreciation than a quick buck from cash flow.

But some market watchers warn that the D.C. real estate industry is being driven less by fundamentals than by ego and greed — forces, they say, could shatter Washington's image as a recession-proof market.

"Is there any pride in being the last major market to go into the tank? I don't think so," said Randall W. Byrnes, senior vice president and regional manager of Spaulding & Slye.

Byrnes said his firm, which primarily develops in the suburban markets, is actively searching for a viable downtown project but has not found one. "They are very, very skinny deals, and there is a great deal of risk. We've looked a lot, and we just can't seem to make any sense out

See CHANGING MARKET, page 17

## Auction set on pricey site

### *Goldome to start bidding at $17 million for Maryland plot*

By MARK HESCHMEYER

Goldome Realty Credit Corp. with offices in Rockville has put up for auction one of the most valuable pieces of vacant land left along Rockville Pike near the White Flint Metro station.

Goldome Realty is a real estate commercial banking subsidiary of Goldome Bank for Savings in Buffalo. Goldome is the largest thrift in New York but it has posted two consecutive quarters of $12 million losses. In recent weeks, it has announced staff cutbacks and said it is considering the sale of some assets to raise cash and improve profitability.

For sale locally is 9.73 acres at the Northeast corner of Nicholson Lane and Executive Boulevard, within walking distance of White Flint Shopping Mall.

Minimum bids for the site will start at $17 million, approximately $40 a square foot. However, the bidding is expected to move well beyond that.

Goldome Realty has an independent

See SOME OF NATIONS, page 18

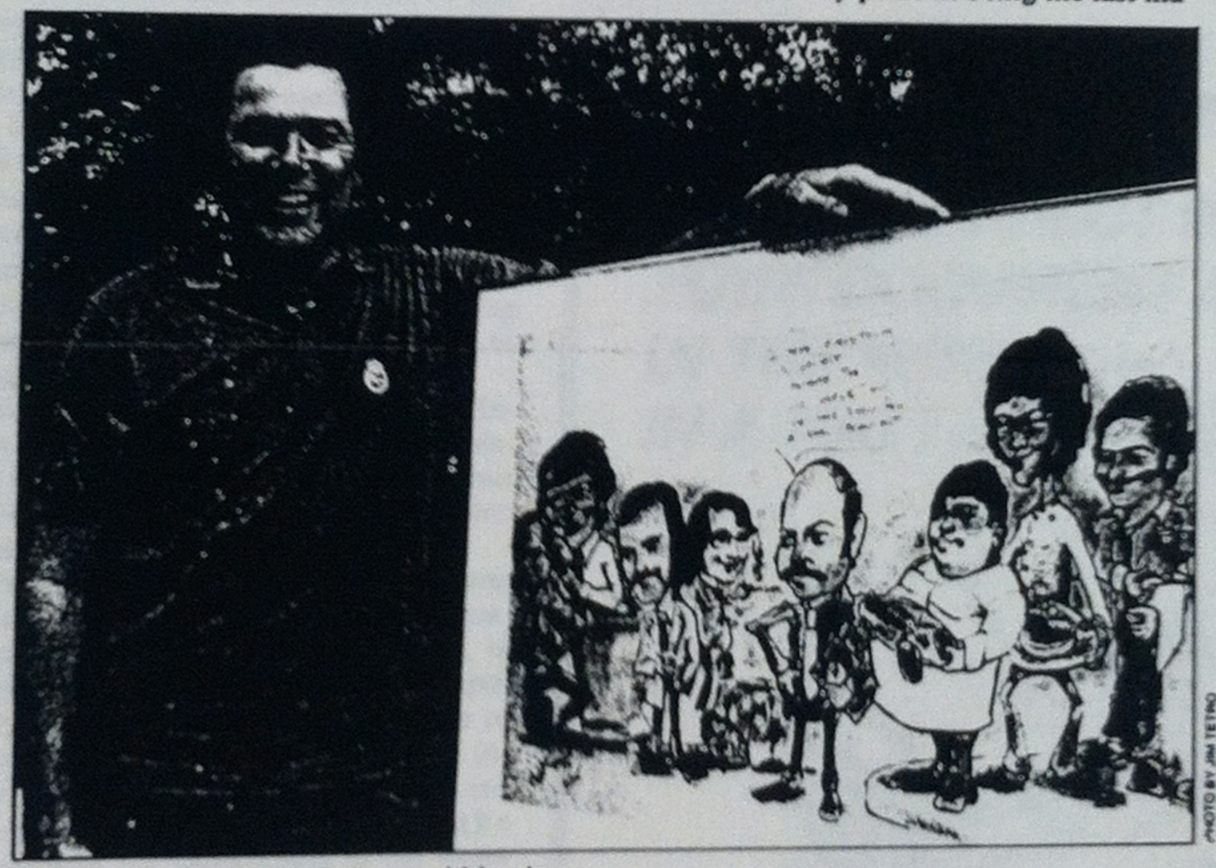


PHOTO BY JIM TETRO

Local mall artist Charlie Fulton and friends.

## Fast-buck artists do a quick draw

### *Caricaturists are welcomed draw at most area malls*

By MARK CHUBB

Charlie Fulton is as far from your typical artist as Tysons Mall is from the Left Bank of the Seine. Instead of a sun-splashed Parisian landscape for a backdrop, his surroundings are fast-food restaurants, jewelry stores, one-hour photo labs and opticians.

For the past 20 years, Fulton has been a mall artist and he has drawn thousands of caricatures of children for their parents and girls for their boyfriends.

It may not be what Fulton envisioned when he enrolled in the Pennsylvania Academy of Fine Arts years ago, but it's a job he has come to know and like.

"I felt that commercial art was more honest than fine art," Fulton says of the career choice he had to make.

And he's not the only one who saw it that way. In 1980, Fulton founded Caricatures for All Occasions, which he described as a loose association

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Linpro steps up development. PAGE 7

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# ...stice files fiery brief to overturn Inslaw ruling



continued from page 1

had illegally sought to liquidate Inslaw, a Washington-based software company, after the firm filed for bankruptcy in February 1985.

According to Bason, the effort was part of a larger scheme of "fraud, trickery and deceit" aimed at stealing software developed by Inslaw in connection with a 1982, $10 million Justice Department contract.

Bason, who awarded Inslaw $7.8 million in fees and damages, was subsequently denied reappointment as District of Columbia bankruptcy judge.

In recent months, the case has received widespread notoriety in the media, in large part because no explanation was ever provided by court authorities as to why Bason was not reappointed as judge.

Inslaw president William Hamilton, meanwhile, has repeatedly asserted that the department's efforts to put Inslaw out of business were part of a criminal conspiracy engineered by high-level Justice officials. Their goal, according to Hamilton, was to deliver Inslaw's litigation management software to a Fairfax company controlled by Earl Brian, an associate of Attorney General Edwin Meese. Brian has denied the charges.

While the recently filed Justice brief does not address Hamilton's conspiracy allegations, it attacks both the method and findings of the ruling that preceeded them.

According to the brief, Bason relied upon "tortured inferences, unsupported innuendos and shreds of hearsay evidence" in finding against the government, and displayed bias against the agency by subjecting virtually all government witnesses to "savage, ad hominem and unjudicial attacks by the court."

"In an extraordinary series of rulings, the bankruptcy court assumed that numerous witnesses from all parts of the Department of Justice perjured themselves — almost as a matter of course — to protect their employer," the brief states.

Lawyers for the Justice Department also charged that Bason demonstrated clear evidence of bias by suggesting that his ouster as bankruptcy judge may have been the result of his Inslaw ruling.

As a result of those public pronouncements, both in the press and in a letter to court officials, government attorneys filed a motion in January asking Bason to recuse himself from the case.

The judge refused, and at the hearing, asked government lawyers whether they knew of "anything that would indicate that the Department of Justice has had anything to do with my non-appointment," the brief states. They replied they did not.

At the heart of the explosive case is a contract dispute surrounding the proprietary ownership of enhancements Inslaw made to software contracted to the Justice Department in 1982.

> According to the brief, Bason relied upon 'tortured inferences, unsupported innuendos and shreds of hearsay evidence' in finding against the government.

The contract's request for proposal required Inslaw to grant the Department full unlimited rights to case management software the firm had developed for installation in 94 U.S. Attorney's offices around the country.

Inslaw agreed that the so-called Promis software, developed with federal funds, was in the public domain. However, three weeks after the contract was signed, Inslaw announced that it had developed with private funds an enhanced version of the software, and sought the Justice Department's permission to commercially market it.

Since some of those enhancements were apparently funded through an earlier, separate federal contract, federal officials were reluctant to grant the approval, and also feared the private sector marketing efforts would indirectly increase costs to the government.

Meanwhile, according to the brief, Inslaw decided for efficiency's sake to maintain only one enhanced verison of Promis and not to keep a 'stripped-down' version for use in the contract.

The growing, problematic dispute over the enhancements eventually led to a compromise, known as modification 12, in which the government agreed to temporarily limit distribution of the software to the 94 U.S. attorney's offices, while Inslaw agreed to deliver the existing enhanced, Promis software to the government for safekeeping in the event the firm went under.

The agreement would be in force pending Inslaw's complete accounting of the enhancement costs and resolution of the ownership issue.

That accounting was never completed, and Inslaw entered into bankruptcy in February 1985. Although Inslaw installed Promis in 22 U.S. Attorney's offices, the remaining portion of the implementation contract was cancelled. The Department of Justice subsequently installed the software in 23 additional U.S. attorney's offices between June 1985 and August 1987.

In his ruling, Bason had concluded that the agency's use of the enhanced Promis following Inslaw's bankruptcy violated the bankruptcy court's automatic stay, which requires that creditors' claims be frozen pending resolution of the bankruptcy.

Not so, according to Justice officials. Modification 12 gave the department authority to install the enhanced version of Promis in 94 field offices.

Furthermore, the brief claims, the appropriate venue for resolution of the dispute was the Board of Contract Appeals, not the bankruptcy court.

"(Bason) ignored the evidence that Inslaw did, in fact, agree to provide the government with unlimited rights to the software," the brief states. "The government's negotiators demanded it as a condition of the contract, and if Inslaw refused, it would not have been awarded the lucrative contract."

Other salient points of the government's argument include:

• An evidenciary note Bason called a "smoking gun" which proved "intense bias against Islaw" shows nothing more than an intention to gather information about Inslaw's performance on the contract.

Bason ruled that the note's author, C. Madison Brewer, was motivated to harm Inslaw in retaliation for being fired by the firm some years earlier.

"Of all the bankruptcy court's unfounded findings, this is one of the most preposterous," the brief states. "No fair-minded person could have reached such a conclusion. The notes reflect nothing about what Brewer did or did not consider."

• Bason's finding that Justice officials attempted to illegally convert Inslaw's Chapter 11 proceedings into liquidation were wrong, since the agency never filed a motion asking for conversion.

• Cornelius Blackshear, a federal judge in New York, originally testified in the case that a bankruptcy trustee in Alexandria had told him Justice officials were applying pressure to have the case illegally liquidated.

A day later, Blackshear recanted his testimony, saying he was thinking of a different case. The conversations between Blackshear and the trustee, William White, had occurred two years before the depositions.

"Although the court had not seen Judge Blackshear and admitted that it had 'no reason to doubt his honesty or veracity,' it refused to believe the judge's (second) affidavit," the brief states.

"The court's strained, and at points incomprehensible, explanation of this refusal is a graphic illustration of the lengths to which it went to discredit any witness whose testimony was favorable to the government."

• Because Bason withheld notes concerning damaging comments made by Justice official Anthony Pasciuto to Inslaw owners William and Nancy Hamilton concerning attempts to liquidate Inslaw, "the court demonstrated that it was unreasonably distrustful of the United States and that it could not be an impartial trier of fact."

And although Pascuito admitted on the witness stand that he had lied to the Hamiltons in order to damage his superior, Thomas Stanton, "the court instead believed the triple hearsay notes of an Inslaw principal."

Throughout, the Justice brief points up allegedly biased behavior by Bason, focusing particularly on his subjective credibility judgments about the testimony of government witnesses.

"Some of the court's credibility findings were remarkable for their savagery," the brief states. "For example, of Mr. Kelly, Inslaw's former general counsel, the court said: "His hatred of Hamilton oozed from every pore; it was tangible and palpable . . . Kelly showed that he was eager to say anything to harm Hamilton as long as it would sound plausible."

"This vicious attack is not supported by a single citation to the record. This failure to identify the basis for the decision is reversible error."

# United Savings delays meeting amid SEC probe

United Savings Bank of Vienna has pushed back its annual meeting from June 20 to Aug. 29 because of a Securities and Exchange Commission investigation into insider stock trades reportedly tied to the merger of United and Richmond-based Investors Savings Bank.

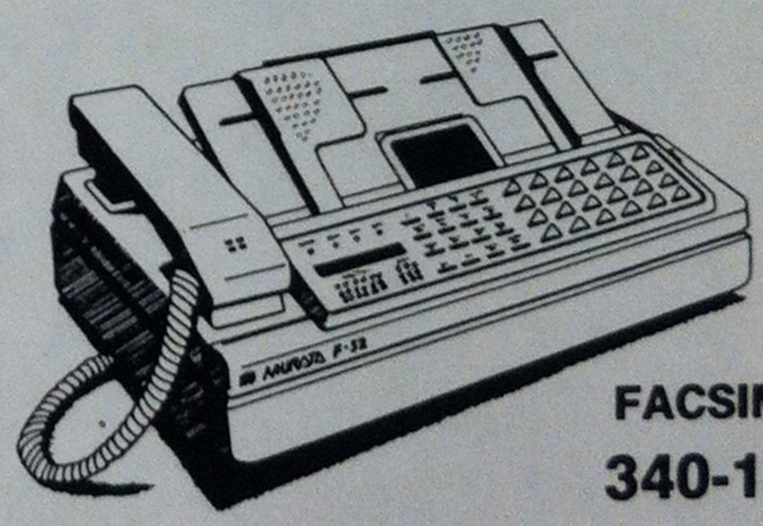
United, a $500-million savings bank, recently signed a definitive agreement to merge with Investors, which has $2.1 billion in assets.

Earlier this month, United announced that the SEC was looking into stock trading in United securities prior to the public announcement of the merger.

The commission is investigating stock trades made by United executives, employees and relatives of the savings bank's employees, United said.

Robert J. Lewis, United's chairman, said the adjournment would give the savings bank more time to determine the impact of the investigation. Lewis said the announcement would have no effect on the proposed merger.


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# Whistle Blowers Said to Back Up Inslaw

By LEIGH RIVENBARK

Washington software developer Inslaw Inc. said three whistle blowers have corroborated the company's charges that the Department of Justice intended to drive the company out of business.

The company said the three, either current or former Justice employees, have advised Inslaw to interview three senior Justice officials on DOJ's alleged role in forcing Inslaw into bankruptcy.

The three senior officials Inslaw wants to depose are deputy assistant attorney general Mark M. Richard of the Criminal Division, deputy associate attorney general Ronald L. Gainer of the Office of the Associate Attorney General and deputy assistant attorney general John C. Keeney of the Criminal Division.

The information the whistle blowers provided indicates that the three senior officials may have knowledge regarding the alleged departmental interference, according to a recent court filing.

### Ongoing Battle

Inslaw has been locked in an ongoing court battle with Justice over case-tracking software that Inslaw alleges Justice tried to steal by bankrupting the company.

Inslaw attorney Michael Friedlander would not elaborate on the questions Inslaw has for Keeney, Gainer and Richard, but Inslaw's July 7 court filing says the three officials "possess information critical to a key issue...i.e., DOJ's interference with Inslaw's relationship with its customers and creditors and DOJ's interference with the efforts of Inslaw to reorganize pursuant to the protections afforded debtors under Chapter 11 of the Bankruptcy Code."

Inslaw has long maintained that, under pressure from Justice, U.S. trustees planned to convert the company's reorganization bankruptcy to liquidation bankruptcy. Justice argues that Inslaw's conspiracy theory obscures the company's own problems in fulfilling a 1982 contract with the department.

### Whistle Blowers Consistent

The July 7 Inslaw filing with the U.S. Bankruptcy Court for the District of Columbia said the whistle blowers "corroborated each other's story," which is that Justice intentionally planned "at the highest level of DOJ to prevent the successful reorganization of Inslaw."

The Inslaw filing asks to proceed with the depositions as soon as possible to ensure that the three whistle blowers continue to cooperate and to talk to the officials while their memories are fresh. Two sources close to separate investigations of the case said the whistle blowers provided attorneys with the names of the men to question. The sources also said that, at present, the whistle blowers only can be identified as former and current Justice employees.

The Justice Department has not filed a response yet but expects to file one early this week, spokeswoman Amy Brown said.

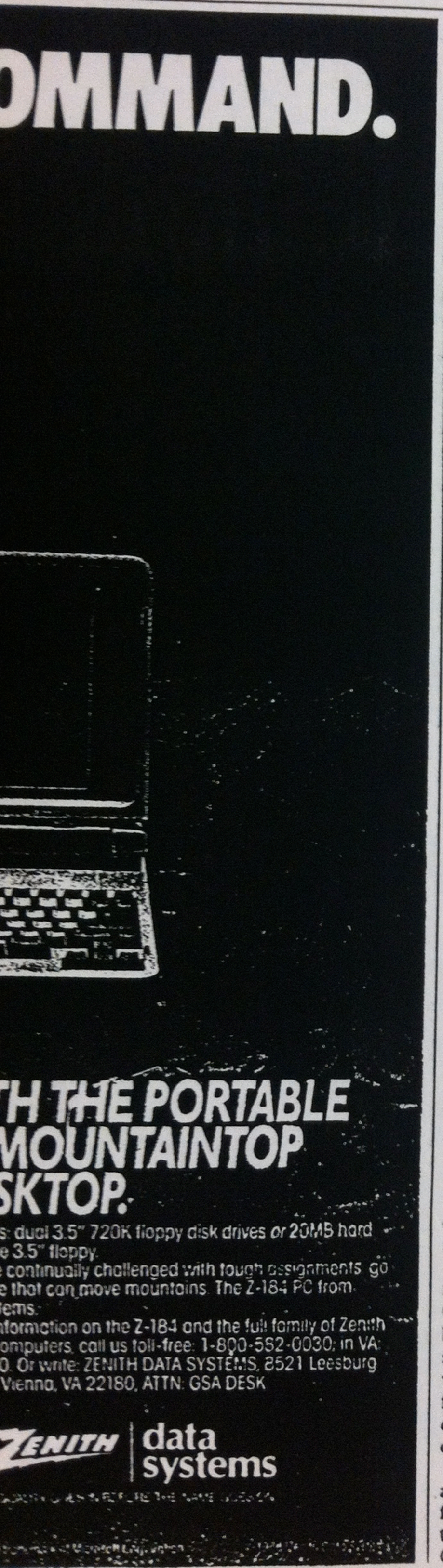
Attorneys for Inslaw had in June notified the three senior Justice officials that Inslaw planned to take depositions from them. Chief Judge Aubrey Robinson Jr. of the U.S. District Court halted the depositions by staying all new adversary proceedings while the court resolves issues currently before it. Inslaw's July 7 filing is a request to Robinson to withdraw the stay and allow depositions to begin. Robinson will not issue a decision until after Justice has had time to respond.

Of the three officials Inslaw wants to depose, Keeney was the author of a May 4 letter to Inslaw attorney Charles Work. Keeney wrote that the department's Public Integrity Section would investi-

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pressure from Justice, U.S. trustees planned to convert the company's reorganization bankruptcy to liquidation



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Of the three officials Inslaw wants to depose, Keeney was the author of a May 4 letter to Inslaw attorney Charles Work. Keeney wrote that the department's Public Integrity Section would investigate "certain aspects" of Inslaw's allegations, referring to charges that Justice employees perjured themselves during earlier trial testimony.

### Justice Request Denied

In a separate development, Judge William B. Bryant of the U.S. District Court denied the Justice Department's request to rescind an order that prohibits three other Justice employees involved in the Inslaw case from working on any project that might involve Inslaw's Promis software.

Justice feared that Inslaw would interpret the prohibition as covering the employees' work on Project Eagle, the department's massive office automation procurement.

Justice asked Judge Bryant to clarify the prohibition or lift the stay, but in a July 6 ruling Bryant refused to lift the stay, according to attorney Friedlander.

Finally, two Justice employees involved with the Inslaw case in different capacities have left the department for new jobs.

Jack Rugh was assistant director for information systems in the Executive Office of U.S. Attorneys and was named by Inslaw as one of the employees who supposedly worked against the company within Justice. Rugh left the department for a job with a private company as a career move, not because of the Inslaw case, a Justice source said.

Dean Cooper, one of the attorneys arguing the case for the department, left for a job as assistant general counsel at the Federal Home Loan Mortgage Corp. ◄

PR|IN|IB-12



# Meese Order Blocking Justice Officials' Testimony on Inslaw Is Reversed

By Elizabeth Tucker
Washington Post Staff Writer

The dispute between Washington computer software firm Inslaw Inc. and the Justice Department took another twist yesterday when outgoing Attorney General Edwin Meese III directed department lawyers to block two Justice officials from giving depositions to a Senate subcommittee because lawyers for Inslaw also would be present. However, Justice officials relented after a testy hearing before Sen. Sam Nunn (D-Ga.), chairman of the Senate permanent subcommittee on investigations.

Nunn, who criticized the Justice Department for assigning department attorneys to its employees involved in the case rather than allowing them to get independent counsel, said the tangled Inslaw case "raises serious questions of intimidation, serious questions of conflict of interest."

The Inslaw case centers on allegations by the founders of the small company that the Justice Department tried to drive it out of business so that another company could take it over and sell its case-tracking software to the department.

That allegation and a ruling last September by then-federal bankruptcy Judge George Francis Bason Jr. that the department used "trickery, fraud, and deceit" to steal the rights to Inslaw's product and drive the company into bankruptcy has sparked an investigation by Nunn's subcommittee.

Nunn hastily called a hearing yesterday after Justice Department lawyers told his staff that Thomas Stanton, director of the department's executive office of bankruptcy trustees, and Robert Hunneycutt, staff assistant in that office, would refuse depositions unless lawyers for Inslaw were excluded.

The Justice Department had previously agreed that as long as Justice Department lawyers involved in the appeal of Bason's decision also were representing employees called to testify before the subcommittee, Inslaw lawyers could attend depositions being taken by the subcommittee staff.

John Bolton, assistant attorney general for the civil division, told the subcommittee yesterday that when the depositions came up in Meese's morning staff meeting, the attorney general "said at that point we aren't going forward with depositions if Inslaw's counsel is present."

However, after Nunn objected, Bolton said he would recommend that the new attorney general, Richard L. Thornburgh, allow the depositions to proceed with Inslaw's attorneys present.

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PRI|IN|IB-13

# GAO Criticizes Ethics Of Justice Department

*Associated Press*

Washington

**The Justice Department, unlike other federal agencies, does not require employees to file confidential financial disclosure reports and has failed to periodically evaluate its ethics program, congressional investigators said yesterday.**

The General Accounting Office said formal ethics training has not been provided to everyone at the department, either.

"The Justice ethics program contains many of the basic elements required by law and regulations," the GAO said. "However, certain required elements are missing."

The report was requested in December by Representatives William Ford, D-Mich., and Gerry Sikorski, D-Minn. Ford is chairman of the House Post Office and Civil Service Committee; Sikorski is the chairman of a subcommittee on human resources.

Sikorski said his panel observed that the Justice Department "has failed to maintain an effective system of preventing ethics violations by DOJ employees."

He cited questions about then-Attorney General Edwin Meese's stock holdings in seven regional telephone companies, and a June 1987 letter by Meese's wife Ursula to a federal judge in Tennessee requesting leniency for a family friend who was awaiting sentencing.

At the Justice Department, ethics programs are handled by the various divisions. Allegations of ethical misconduct are reported to the Office of Professional Responsibility, which reports to the attorney general.

Like all high-ranking executive-branch officials, top people at the Justice Department must file public financial disclosure forms under the 1978 Ethics In Government Act.

At other agencies, many civil servants are required to file confidential financial disclosure forms that show assets, investments and a spouse's job. These forms are a vital tool in spotting potential conflicts of interest.

"Confidential financial reports normally are required of employees who have significant duties and responsibilities and who are not already covered by the public reporting requirements," the GAO report said.

Justice Department employees, however, are an exception.

NO. 40

OCTOBER 3, 1988

# Washington BUSINESS JOURNAL

VOLUME 7, NUMBER 16 ONE DOLLAR WEEK OF SEPTEMBER 12, 1988

## Inslaw files answer to Justice appeal

By BONAR MENNINGER

Inslaw Inc. recently filed an answer in its appeals battle with the U.S. Department of Justice over a controversial bankruptcy court ruling made almost a year ago.

The 172-page brief was submitted Sept. 2 to Williams B. Bryant, the District of Columbia District Court judge scheduled to hear the Justice Department's appeal.

In the ruling that Justice is appealing, former U.S. Bankruptcy Judge George Bason Jr. said that department officials displayed a "wanton disregard of the law" and used "trickery, fraud and deceit" in an attempt to drive Inslaw out of business and steal its proprietary software. Bason awarded Inslaw $7.8 million.

Inslaw's answer follows the June 17 filing of the Justice Department's brief in the case. That 253-page document argued that the dispute with Inslaw was nothing more than a contract dispute systematically inflamed by Inslaw to cover the company's failing finances. Department lawyers also charged Bason's ruling was driven by bias and riddled with flaws.

In its Sept. 2 brief, Inslaw outlines and defends Bason's ruling.

"In short, the facts found by the Bankruptcy Court paint, in exacting detail, a profoundly disturbing portrait of a government agency that was wholly indifferent to the malfeasance of its employees, and willfully blind to its legal and ethical obligations," Inslaw's brief states.

Judge Bryant is expect to make a decision on the appeal before the end of the year.

Meanwhile, the Senate Permanent Subcommittee on Investigations continues its inquiry into facts and allegations surrounding the Inslaw matter.

The subcommittee has been investigating Inslaw president William Hamilton's allegations that the efforts to put his company out of business were engineered by former Attorney General Edwin Meese, who wanted to deliver Inslaw's software product and business base to an associate, Earl Brian.

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VOL. 2 OCTOBER 3, 1988 NO. 40

FEDERAL COMPUTER WEEK

THE NEWSPAPER FOR SYSTEMS DECISION MAKERS IN GOVERNMENT

# Inslaw Responds to DOJ Appeal Amid Lengthy Court Delays

PR/IN/IB-15

By LEIGH RIVENBARK

The latest round in the legal fight between Inslaw Inc. and the Department of Justice begins just as the bankruptcy court's original scathing ruling against DOJ reaches its first anniversary. During the past year, little has been resolved in the highly publicized case.

In September 1987 former U.S. Bankruptcy Judge George Bason Jr. ruled that DOJ intentionally misappropriated Inslaw's case-tracking software through "trickery, fraud and deceit."

Those three words have found their way into almost every brief either side submits in the bitter and long, drawn-out case, including the most recent brief, submitted Sept. 2 by Inslaw's attorneys.

Inslaw is a Washington, D.C. software firm specializing in legal software, and its primary product is the case-tracking package Promis.

In 1982 Inslaw won a $10 million contract to install Promis in the 94 U.S. attorneys' offices. By early 1985 Inslaw was in Chapter 11, or reorganization, bankruptcy.

## Heart of the Charges

What happened between the 1982 win and the 1985 bankruptcy? Inslaw alleged, and Judge Bason's ruling agreed, that over those three years certain DOJ employees carried out a vendetta against the company, wrongfully cut off payments to Inslaw and planned to expand use of Promis despite a court-ordered stay blocking further expansion of the software.

Inslaw also maintained that, under departmental pressure, a U.S. trustee tried to convert the company's bankruptcy case from Chapter 11, under which the company could reorganize, to Chapter 7, under which Inslaw would have been liquidated.

Inslaw won the first round a year ago, but DOJ is appealing the case — in district court, not in bankruptcy court. The department's massive June 17 brief denied the right of a bankruptcy court to rule on Inslaw's allegations against DOJ because DOJ considers the case a contract dispute. DOJ said the case is a contract matter blown out of proportion by what it called Bason's personal bias against DOJ and Inslaw's attempts to drum up publicity for the case.

DOJ alleged that Inslaw failed in its execution of the contract and is covering up its failure with the adversary case against the department. DOJ also questioned the business acumen of Inslaw president William Hamilton. In turn, Inslaw questioned how DOJ allowed C. Madison Brewer, who had previously worked with Hamilton and whom Hamilton had fired, to remain the department's project manager for Promis.

## New Evidence

Now the latest document in the case, Inslaw's response to DOJ's appeal, has appeared. The brief reiterates the main points of Bason's September 1987 ruling and contends that the ruling and the $7.8 million award to Inslaw were correct and appropriate remedies. DOJ has 30 days, or until Oct. 7, to formulate its rebuttal.

District of Columbia District Court Judge William Bryant will hear the DOJ appeal case, but Bason will not hear the bankruptcy proceedings. Bason was passed over for reappointment to the District of Columbia bankruptcy bench, and his term ran out in early February of this year.

DOJ claims that Bason, who formally protested his mandatory departure, was biased against the department because he believed DOJ was behind his departure, as a punishment for his favorable treatment of Inslaw.

## Expensive Delays

Meanwhile, the bankruptcy proceedings are getting started for the first time since February. Two replacement judges have recused themselves.

The delays may have been expensive for Inslaw. The company's plan of reorganization and a $2.5 million deal with IBM Corp. to pull Inslaw out of bankruptcy have had to wait until a bankruptcy judge was found. The bankruptcy court must approve these plans.

The bankruptcy court also has to rule on Inslaw's attempt to take depositions from employees of AT&T Co. Inslaw claims AT&T muscled its way onto Inslaw's unsecured creditors committee and frustrated Inslaw's attempts to reorganize. Bason had approved Inslaw's request to depose AT&T employees, but AT&T's objections have postponed any depositions until the new bankruptcy judge can decide the issue. ◀

PR|IW|IB-16

# FEDERAL BYTES

Bankruptcy proceedings of Washington software firm Inslaw Inc. — the company battling the Justice Department after a judge ruled that the agency stole Inslaw's software — are back in court after an eight-month delay in finding a judge.

The original judge who ruled against DOJ was not reappointed in February, and two other judges have since recused themselves from the case, claiming conflicts of interest. Now Baltimore bankruptcy judge James Schneider is in charge of the controversial case.

Schneider ruled in his first hearing Oct. 14 that Inslaw could not throw AT&T Co. off its unsecured creditors committee. Inslaw has long maintained that AT&T muscled its way onto the committee and is working to undermine Inslaw's reorganization. But Inslaw's complaint against AT&T looked more like a lawsuit than a bankruptcy matter, Schneider said.

Apparently, Inslaw agrees with the court's assessment. As part of the bankruptcy proceedings, the company had to list potential subjects of future lawsuits it might bring. Among those on the list were AT&T, Hadron Inc., which Inslaw alleges wanted to obtain Inslaw's software, and Earl Brian, an associate of former Attorney General Edwin Meese.

Inslaw's filing says Brian's company, Infotechnology, controls a majority of seats on Hadron's board.

PR[IN/IB-17


# NEW TECHNOLOGY Week

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*From the Editors of The Energy Daily and Defense Week*

**Monday, October 31, 1988**

**Volume 2, Number 43**


## *Europe's Sematech Look-A-Like Ready To Fly*

BY PETER DE SELDING

GRENOBLE, France—A joint, multibillion-dollar effort by Europe's largest electronics companies to design and manufacture next-generation microchips is about to get off the ground after months of delays, according to representatives of the companies involved.

The Joint European Semiconductor Silicon (Jessi) initiative, which will aim to produce microchips in the 0.3-micron range for the 1990s, has been under negotiation for the better part of the year. Talks have mainly involved Europe's two biggest electronic firms, Philips of the Netherlands and Siemens of West Germany. Recently, however, progress has apparently stalled.

But at the TEC 88 meeting here, officials from both companies affirmed that Jessi will go forward, with possible participation by Thomson of France, Europe's third largest electronics company.

"The amount of money is huge, more than one big company can afford," said Kurt Garbrecht of Siemens, who added that Jessi

*(Continued on page 12)*

## Composites Vs. Metals: Du Pont, The Aggressor

BY ANNE ANDERSON

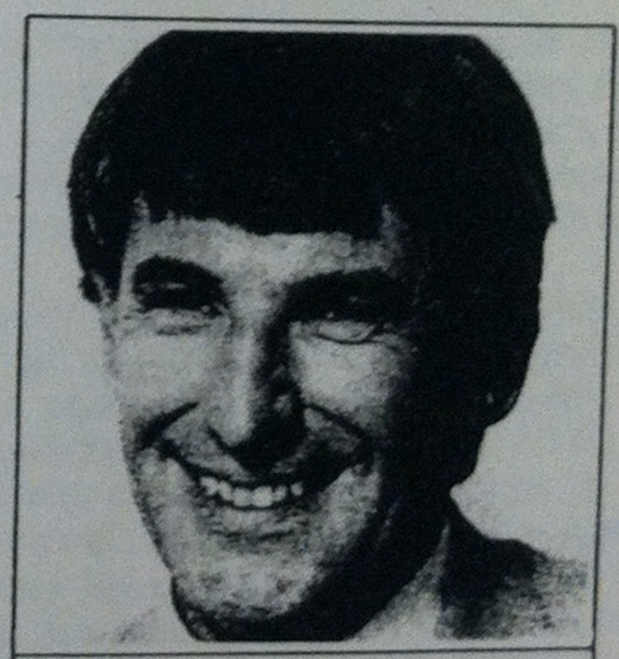
WILMINGTON, Delaware—E.I. du Pont de Nemours & Co., one of the world's leaders in advanced materials, is pursuing a new business strategy to make sure the wonder materials that it has invented get into practical use. Realizing that engineers throughout the entire industrial complex are not applying its state-of-the-art composites, Du Pont intends to push its materials into use by making components, parts and "major subassemblies." This is a substantial change from being just a raw materials supplier.

"We are beginning to realize that materials engineering as [it has been] practiced until now is not capable of meeting emerging needs" of end users, J. Michael Bowman, director of the composites division of Du Pont, told a small group of reporters here last week. "Profoundly," he said, there is "a discomfort with the kind of conceptual thinking required for designing with advanced materials."

"An abundance of advanced materials already exist, are well proven and are ready to be implemented," Bowman noted. "Major material inventions are not required to get started. The initial investment is in place. But we have not yet begun to use these materials as efficiently or effectively as we can."

There is another great impetus to get these materials into commercial use: money. Du Pont expects the market for advanced composites to grow to $20 billion by the year 2000.

*(Continued on next page)*



**Du Pont's J. Michael Bowman**

## 'Watergate' Scandal Lurks At Justice Dept.

BY LUCY REILLY

An alleged computer technology conspiracy involving top U.S. government officials is "a lot dirtier for the Department of Justice than Watergate was" a confidential high-ranking Justice Department official recently told the U.S. Senate Judiciary Committee, according to a secret memo obtained by *New Technology Week*.

The involvement of the Justice Department, charged in a $7.8 million lawsuit last year with "trickery, fraud and deceit" in its attempt to steal the rights to a Washington, D.C.-based computer software firm, links top agency officials in a conspiracy to undermine one computer firm and award the winnings to another, less well-known firm, the memo alleges.

"It's not just the breadth of it, but the depth of it," the memo quoted the confidential Senate informant saying.

Presidential appointee and former Deputy Attorney General D. Lowell Jensen engineered the demise of the software firm in order to liquidate it and give the business to friends, the source told the Judiciary Committee. In addition, committee members were told several other

*(Continued on page 4)*

# DOJ Scandal...

(Continued from page 1)

high-ranking Justice officials knew about the conspiracy structured by Jensen, then second only to former Attorney General Edwin Meese III, the source noted.

The memo, written last month by officers of the blackballed Washington computer firm, Inslaw Inc., revealed conversations that occurred in May between the Justice Department informant and the Judiciary Committee. In the memo, Inslaw President William Hamilton Jr. charges the Justice Department with intent to drive Inslaw out of business, steal its software, and award a "massive sweetheart contract" to a company controlled by Meese associate, Earl Brian. Brian served with Meese as health and welfare secretary in President Reagan's California gubernatorial Cabinet until 1975.

"If Attorney General (Richard) Thornburgh knew what really had happened in the Inslaw case, he would fire a number of DOJ officials," a Department of Justice attorney allegedly said recently, according to Inslaw and government sources.

However, the depths of the alleged conspiracy remain unclear thus far. Despite the U.S. Bankruptcy Court ruling last year against the Justice Department, the controversial Inslaw case is far from complete. In June, Justice officials filed an appeal and are awaiting a court response. All written briefs are before the District of Columbia District Court Judge Williams Bryant. Bryant is expected to hear arguments regarding the appeal in November.

However, the most significant update in the case appears to be the recent requests by an internal Justice Department watchdog agency to question key witnesses for the first time in its more than two-year-old internal investigation. Justice's investigation coincides with a separate probe by the Senate Governmental Affairs investigations subcommittee, headed by Sen. Sam Nunn (D-Ga.).

DOJ's Office of Professional Responsibility requested at least three key witnesses in recent weeks to undergo questioning regarding the Inslaw case. Witnesses contacted include Inslaw's Hamilton; Leigh Ratiner, former Inslaw legal counsel; and former bankruptcy court Judge George Bason Jr. While neither Hamilton or Ratiner have responded yet to the requests, Bason agreed to be interrogated Nov. 1.

The Justice Department's two-year delay in contacting essential witnesses in the case has prompted sources close to the investigation to question the recent interest. Previous concern expressed by the courts, government officials and Inslaw regarding the handling of the case appears to have gone unheeded by Justice officials.

"Mr. Meese chose to ignore the [Sept. 1987] ruling, whether or not Attorney General Thornburgh will do anything in that regard, I just don't know," Bason told *New Technology Week* recently. "I tend to suspect that he will wait until after Nov. 8 [U.S. Election Day]."

As the former bankruptcy judge presiding over the Inslaw Chapter 11 filing for reorganization, Bason was accused by government officials of siding with the private firm in his decision last year to award Inslaw $7.8 million in damages. When his reappointment to the court came up early this year, Bason was denied a return to the bench without explanation. Late last month, Judge James Schneider was appointed as the replacement for the Inslaw bankruptcy. A court hearing is scheduled for Nov. 4 regarding the approval of Inslaw's recently submitted disclosure statement.

Contained in the disclosure statement is a recent Inslaw proposal to contract with IBM for a loan of $1.5 million and $925,000 in financing for the upgrading of Inslaw's software products. The upgrade involves inserting IBM's relational Data Base Management System software into Inslaw's MODULAW and Comprehensive Justice Information System software products in place of Inslaw's hierarchical data base manager. Inslaw, in order to guarantee repayment of funds owed to unsecured creditors, would give up title to the IBM versions of its software products, and pay substantial interest and royalties to IBM if the plan is approved.

Also contained in the Oct. 14 disclosure statement, Inslaw charges that Justice enlisted the assistance of numerous players, including AT&T Information Systems, and Systems and Computer Technology Corp. of Pennsylvania, in its attempt to harm Inslaw in the corporate world.

AT&T Information Systems entered into a partnering contract in August 1984 with Inslaw to convert the D.C. firm's software products to operate on the AT&T 3B series of computers under AT&T's UNIX System V operating system. AT&T was to market the resulting hardware and software system to smaller and medium-sized law firms throughout the United States.

AT&T was to loan Inslaw—against future royalties to be paid to Inslaw for the sale of the UNIX version of its law firm software—about $545,000 to reimburse the company for the costs of porting the software to the AT&T operating environment. AT&T anticipated sales for a five-year period to yield royalty payments to Inslaw of about $30 million to $40 million, disclosure statements say.

The projected royalties constituted one of Inslaw's most significant assets at the time of bankruptcy filing in February 1985. Consequently, upon Inslaw's filing, AT&T took a series of actions to breach the contract in violation of the court's automatic stay, Inslaw documents charge.

Shortly thereafter, AT&T—without the knowledge of Inslaw—listed itself as one of the 20 largest creditors in the bankruptcy and asked to be appointed to the creditors' committee. Inslaw didn't list AT&T as a creditor because the contract was considered to be an asset, Hamilton said. However, Inslaw's attempt to remove AT&T from the committee was overruled by the bankruptcy judge in a hearing Oct. 14, Hamilton said.

The other Justice ally, Malvern, Pa.-based Systems and Computer Technology, or SCT, allegedly disclosed confidential and proprietary information regarding Inslaw to DOJ officials after visiting the D.C. software firm in 1985, Inslaw's disclosure statement states. Within a year, SCT initiated a hostile takeover of Inslaw and attempted to interfere with Inslaw's business relationships, the statement continues.

However, an August 1986 bankruptcy court ruling granted Inslaw's request for a six-month extension in filing its plan of reorganization, effectively quashing SCT's takeover bid.

Inslaw's 1985 bankruptcy filing erupted out of a bitter dispute that has raged between Justice and the software firm since 1982. In March 1982, Justice awarded a

(Continued on page 5)

# DOJ Scandal...

(Continued from page 5)

three-year, $9.9 million contract to Inslaw to install the firm's computer tracking system in 94 U.S. Attorneys' offices throughout the nation. Developed with federal funds by Hamilton in the early 1970s, the software system—named PROMIS—tracks the progress of legal cases through the criminal justice system. Hamilton developed the system when Inslaw was known as the non-profit Institute for Law and Social Research.

However, within three weeks of landing the Justice contract in 1982, Inslaw announced it had developed an enhanced version of PROMIS and sought the department's permission to market it commercially.

Federal officials were reluctant to grant the firm approval, citing that some of the enhancements were funded through previous government funds. In addition, DOJ officials feared that commercial marketing would increase costs to the government, Inslaw officials charge.

Justice eventually stopped payments to Inslaw on the contract, charging the firm defaulted by failing to install PROMIS on schedule, overcharging the government and illegally attempting to sell software developed under government contract. DOJ's refusal to pay Inslaw eventually forced the firm into bankruptcy since a large portion of its business was devoted to the federal contract.

Two top Justice officials were responsible for halting payment and attempting to put the firm out of business, Inslaw officials claim. C. Madison "Brick" Brewer—who was fired by the software firm in 1976—should have been disqualified by DOJ from his position as overseer on the PROMIS contract for conflict of interest, Hamilton charges.

When Hamilton initially complained to DOJ, he was told that Brewer was not Inslaw's only problem, the firm's recent disclosure statement notes.

"There is a Presidential Appointee in the current administration who is so antagonistic to PROMIS and Inslaw that I have to maneuver to keep him away from the meetings of the U.S. Attorneys for fear that he will so poison the well that the nationwide project will have no chance of success," the disclosure statement quotes William Tyson, director of DOJ's Executive Office for U.S. Attorneys, as telling Hamilton.

While Tyson never mentioned the name of the appointee, Hamilton and government sources have since said they believe it was Jensen.

Inslaw officials accuse Jensen of perpetrating Inslaw's downfall, claiming a bitterness remained from Jensen's unsuccessful bid to sell a similar software system to PROMIS to district attorneys' offices throughout California in the 1970s. Called Dalite, Jensen's system was edged out by Hamilton's PROMIS, which had been installed previously.

While Inslaw's concerns went unanswered, it appears Justice officials were maneuvering to oust the firm as the contractor and award the PROMIS contract to Meese associate, Earl Brian, court documents claim. Six months after Inslaw's bankruptcy filing, Meese approved Jensen's recommendation to increase the earnings potential of the contract by expanding the contract to include virtually every Justice Department bureau throughout the country.

Jensen's recommendation, called Project Eagle, would call for the procurement of standardized computer hardware and software for the 94 U.S. Attorneys' offices, as well as for the Immigration and Naturalization Service, the Bureau of Prisons, and the U.S. Marshal's Service. Project Eagle was to be the largest systems initiative in the history of the Justice Department, Inslaw documents state.

DOJ officials then submitted requests for proposals from vendors to develop, install and integrate software for the Project Eagle computers. Proposals were to include software for word processing, electronic mail, electronic exchange of revisable legal documents, and access to external legal data base services such as LEXIS, WESTLAW, AND JURIS, court documents state.

Furthermore, Justice stated that the necessary case-tracking software would be developed outside the Project Eagle procurement. However, 90 days after the original proposal was released, DOJ officials issued a technical amendment to the procurement, stating DOJ had the option to install PROMIS on Project Eagle computers, DOJ officials admitted last spring in U.S. District Court pleadings.

PRIN/IB 18

Fx to Hamilton

Monday, November 28, 1988 THE NATIONAL LAW JOURNAL

*Hearing Will Probe 'Coincidences'*

# INSLAW's Next Round Up Soon

By Fred Strasser
National Law Journal Staff Reporter

WASHINGTON — When the Senate Permanent Subcommittee on Investigations began probing the Justice Department's dealings with INSLAW, a computer software firm driven into bankruptcy by a contract dispute with the department, Chairman Sam Nunn, D-Ga., said the case had him puzzled. "There are just an awful lot of coincidences," he observed privately.

Indeed, the INSLAW saga of alleged conspiracy and cover-up is a bizarre story at best. By no means over yet, the next step will be a hearing of allegations against the major Washington, D.C., firm of Dickstein, Shapiro & Morin, INSLAW's attorneys for about 10 months.

On Dec. 2, a bankruptcy judge in Baltimore will hear evidence on INSLAW's contention that the law firm, to protect its relationship with then-Attorney General Edwin Meese III and other senior department officials, acted against the company's interests and engaged in "unethical conduct." INSLAW is seeking to deny Dickstein more than $400,000 in attorney fees.

Dickstein, whose senior partner Leonard Garment represented Mr. Meese during a 1983 independent counsel investigation, said it gave INSLAW full and proper representation and will fight for its fees. *In re INSLAW*, 850076.

"We are yet to have our day in court," said the firm's Robert J. Higgins, who is handling the case. "Everybody's printed INSLAW's charges and finally they are going to have to prove it. What they've got is...double, triple, quadruple hearsay...The allegations about our law firm are categorically untrue, but charges are much more interesting than denials."

INSLAW has claimed for years it was the object of a departmentwide conspiracy to destroy the company and to steal its case-tracking software. U.S. Bankruptcy Judge George Bason Jr. in D.C. largely agreed. Calling the department's conduct "outrageous," he awarded INSLAW $6.8 million in damages in February and suggested less than proper behavior on the part of former Deputy Attorney General D. Lowell Jensen, now a federal judge in San Francisco, and other ranking department officials.

Judge Bason noted several of the coincidences that struck Senator Nunn:

- The $10 million contract was handled by a fired, former employee of INSLAW. And Judge Jensen, then associate attorney general, never investigated INSLAW's complaints about him, as the law required.
- A federal bankruptcy judge, formerly a bankruptcy trustee, said in a deposition he had been improperly pressured to help liquidate the company, then recanted his

*Continued on page 22*

# INSLAW Hearing to Probe Many 'Coincidences'

*Continued from page 3*

testimony the following day after a visit from Justice Department lawyers.

• Another department official told Judge Bason that he'd been pressed to liquidate the company.

• The deputy director of the Office for United States Trustees recanted his testimony about INSLAW's mistreatment on the stand.

Then, the fate of Judge Bason himself entered the picture when he was not reappointed to the court.

INSLAW's lawyers have suggested a motive for all this. INSLAW's president William Hamilton said he received a call in April 1983 from Dominic Laiti, chairman of Hadron Inc., offering to buy the company to get into the criminal justice software business. Mr. Hamilton said when he rejected the overture, Mr. Laiti boasted of political connections and said, "We have ways of making you sell." Mr. Laiti has said he does not recall the conversation.

Later Mr. Hamilton learned that a company chaired by Dr. Earl Brian, who served in then-Governor Reagan's California cabinet, held a majority of seats on Hadron's board. Hadron later won another major Justice Department contract.

INSLAW, represented by Charles R. Work of the D.C. office of Chicago's McDermott, Will & Emery, said litigation counsel Leigh Ratiner actually did a fine job on the case — until he was forced out of Dickstein.

His separation agreement bars discussion of his departure. INSLAW suggests in the story laid out in the pleading objecting to Dickstein's fees that it stemmed from Mr. Ratiner's aggressive advocacy, including dragging Judge Jensen into the suit.

The company claims that the new bankruptcy judge, James F. Schneider, can reasonably conclude Dickstein bowed to pressure from Mr. Meese and the department to end the INSLAW litigation on the government's terms. As key evidence, INSLAW cites a conversation between Mr. Meese and Mr. Garment, which it said was not reported to the client and which has still not been described; the dismissal of Mr. Ratiner; and the firm's push for a settlement before conducting discovery.

INSLAW said the first signs of trouble cropped up after Mr. Ratiner circulated a May 1986 draft complaint that named Judge Jensen 54 times. Other Dickstein lawyers reportedly deleted any reference to Judge Jensen.

Two months later, Mr. Ratiner said he had asked Mr. Meese's friend — E. Robert Wallach, then of counsel to the firm — to speak to the attorney general about INSLAW's problem. Mr. Wallach said he would also try to "desensitize" Judge Jensen on INSLAW, but warned that the company should not embarrass the former official. In September, Mr. Wallach reported Judge Jensen was behind the department's refusal to settle and "queered" Mr. Meese on INSLAW.

In October, shortly after news reports of allegations about Judge Jensen that Mr. Ratiner had eventually included in his complaint, Mr. Ratiner was asked to leave the firm. INSLAW claims Mr. Ratiner said the managing partner told him "Garment's political motivations were an important factor," which Mr. Garment flatly denies.

INSLAW also claims Dickstein attempted to force a quick and harmful settlement. On Jan. 7, 1987, just before discovery was to begin, Dickstein lawyers allegedly told Mr. Hamilton the chances of winning the case had suddenly deteriorated and the company should settle the next day. There was no settlement, however, and the next week Mr. Ratiner, still at the firm, withdrew, warning Mr. Hamilton that Dickstein lawyers "would not seek the evidence" to win.

The final step, INSLAW said, came the next day when Dickstein lawyer Michael E. Nannes urged an immediate settlement on terms that were "utterly unacceptable," and led the company to believe its lawyers had abandoned its claim.

INSLAW tried to block payment of nearly $150,000 in early 1987 on the same grounds, but the firm withdrew its application for interim fees. Now the question is whether a new judge will agree with Dickstein that "INSLAW's objection is scandalous and defamatory, and should be stricken."

The Washington Post

PR/IN/IB-19

# Inslaw Back in Business, But Loses Crucial Ruling

By Elizabeth Tucker
Washington Post Staff Writer

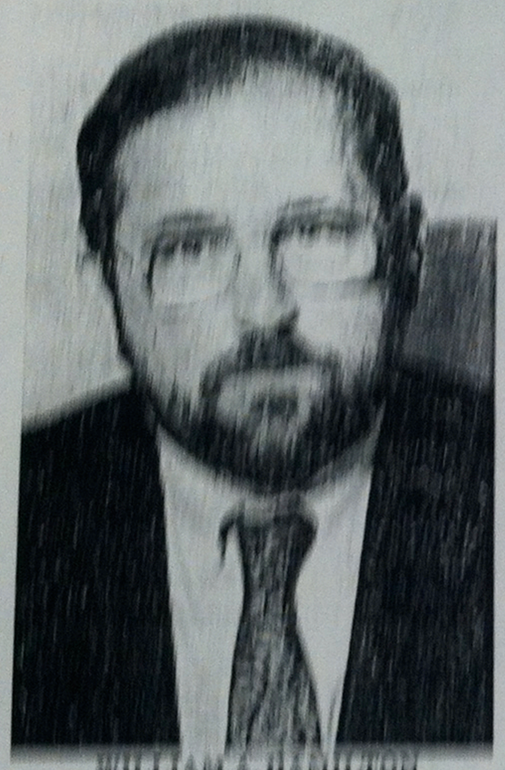
Inslaw Inc., the Washington computer software company that claimed it was driven into bankruptcy by interference from the Justice Department, has emerged from bankruptcy reorganization—but only after losing a crucial battle with its former law firm.

Federal Bankruptcy Judge James Schneider in Baltimore last week confirmed the reorganization plan, which includes a $2.5 million cash infusion from International Business Machines Corp.

But Schneider also ruled that Inslaw must pay $464,000 in legal fees to a Washington law firm that Inslaw has alleged was pressured by the Justice Department into dropping the company as a client.

Inslaw has been embroiled in a bitter battle with the Justice Department, which, it alleges, stole the case-tracking software it developed for U.S. attorneys' offices and drove it into bankruptcy because of a vendetta against the company by some Justice officials. Inslaw filed for protection under Chapter 11 of the federal bankruptcy code in February 1985.

Last year, federal bankruptcy Judge George Francis Bason Jr. ruled that Justice Department officials had used "trickery, fraud and deceit" against Inslaw and awarded the company $6.8 million in dam-



WILLIAM A. HAMILTON
"a normal company again"

ages. Justice is appealing that ruling. The bankruptcy case was transferred to Schneider this year after Bason was replaced.

Inslaw's creditors, who are owed a total of $12.5 million, voted earlier this month to accept the reorganization plan. Under the plan, which Schneider approved last Tuesday, Inslaw will pay secured creditors 100 percent of their debts, plus interest, over the next eight years, while unsecured creditors will get

See INSLAW, D5, Col. 1

# Inslaw Inc. Emerges From Bankruptcy

INSLAW, From D1

full payment, without interest, over the same period of time.

The deal is hinged on the $2.5 million payment from IBM, which wants to work with Inslaw to enhance and expand the IBM version of the Washington company's software.

Inslaw President William A. Hamilton said yesterday that approval of the reorganization plan removes the onus of Chapter 11 status from the company, which he said had impeded Inslaw's marketing efforts by causing clients to "wonder if you'll survive." Now, Hamilton said, Inslaw can "start to function in the marketplace like a normal company again."

However, while it won approval of the reorganization, Inslaw could not get Schneider to go along with its contention that it had been victimized by Dickstein Shapiro, which Inslaw had alleged was influenced by the Justice Department conspiracy against the company. Inslaw had asked the judge to rule that it did not have to pay the fees it owed Dickstein Shapiro after the law firm dropped the company as a client early in the bankruptcy proceedings.

Frederick Lowther, a managing partner at Dickstein Shapiro, said Inslaw's allegations that the law firm's close relationship with former attorney general Edwin Meese III tainted its handling of the Inslaw case is

said, the dispute with Inslaw arose because Dickstein Shapiro was unable to agree with the company over how its bankruptcy case should be handled.

"The judge just flatly overruled their objections [to paying the legal fees], and as far as we were concerned, that vindicates this firm," Lowther said. "It means that all the professional decisions we made in representing Inslaw were correct."

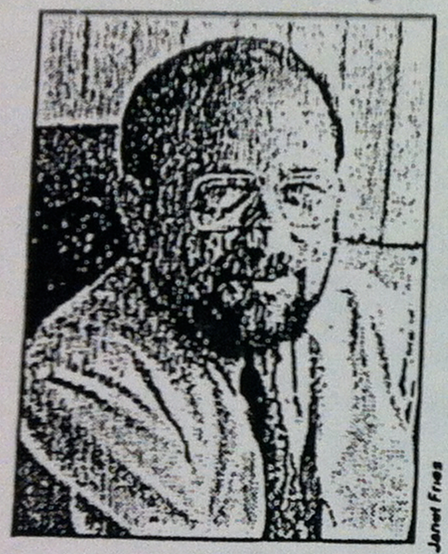
Hamilton said he was "very disappointed" in Schneider's decision about the Dickstein Shapiro fees, and declined further comment. However, under the terms of an agreement between Inslaw and the law firm, the payment of much of Inslaw's bill will be postponed in exchange for Inslaw's agreement not to appeal the judge's ruling.

Skeptics accused Hamilton of "paranoia." One press report even suggested that INSLAW's collapse stemmed largely from Hamilton's lackluster management.

As for Bason, he was dismissed from the bench. In November 1987, Bason rejected a Justice Department motion to liquidate INSLAW. Not quite one month later, he learned he would not be reappointed by the U.S. Court of Appeals for the District of Columbia. In the preceding four years, only four of 136 federal bankruptcy judges seeking reappointment had been turned down. The judge was replaced by S. Martin Teel Jr., one of the Justice Department attorneys who had unsuccessfully argued the INSLAW case before Bason.

Adding insult to injury, when Justice Department attorneys appealed Bason's decision,

*Continued on Page 54*



Janet Fries

*Bill Hamilton*

they cited his failure to be reappointed, questioned his competence, and suggested that the decision not to reappoint him might have tainted his judgment in the case.

In his decision, Bryant vindicates Bason in unequivocal terms. "The cold record adequately supports his findings under any standard of review. Accordingly, the findings will not be disturbed."

As to the charge that Bason was biased, Bryant rejects it out of hand. "Although no written findings had been filed by the time Judge Bason learned that he would not be reappointed, the die had been cast. . . . Judge Bason made his oral ruling on June 12, 1987, and followed with a memorandum opinion on July 20, 1987. A bench ruling on Justice's liability in the main adversary proceeding was announced on Sept. 28, 1987, more than 3½ months before the judge learned that he would not be reappointed. Government liability had already been assessed in no uncertain terms. The only untried part of the case that remained involved damages."

Thus, first Judge Bason had ruled, then the decision was made to remove him from the bench. In its appeal, Justice had tried to reverse the sequence and, in the process, reverse cause and effect as well.

Bryant affirmed Bason's award of damages, recalculating the compensatory award only to subtract the cost of a service that INSLAW never had the opportunity to perform. This shaved $655,200 off that portion of the bill, trimming it to $6.1 million. But the federal district judge confirmed the order that the Justice Deparment should pay INSLAW's attorney's fees—adding another $1.2 million to the government's tab.

Punitive damages are still pending. INSLAW is asking for $5 million, plus $25 million-$100 million in "consequential" damages "to make up for lost business after Justice drove us into the ditch," Hamilton explains. INSLAW is now in the black, successfully filling a contract for IBM, but during the months the company was under water, it lost millions, including an earlier contract with IBM, Hamilton claims.

The investigation continues. In his opinion, Judge Bryant made it clear that while he must limit his review to what Justice did after INSLAW filed its petition for bankruptcy, he did find "striking" evidence that the pattern of harassment flowed from "the higher echelons" of the department. Bill Hamilton still claims that former U.S. Attorney General Edwin Meese was involved, and at least two congressional committees have been looking into his charges.

In September, the staff of the Senate's Permanent Subcommittee on Investigations issued an 80-page report saying, in essence, that it had been hamstrung and reached a dead-end. Charging that "Justice refused to cooperate with the subcommittee's attempts to carry out its legitimate oversight responsibilities," the staff reported that it found no proof of INSLAW's allegations of a conspiracy.

But the report did spell out how it was blocked, observing that the Department's "insistence on a Departmental presence at employee interviews and depositions served, wittingly or unwittingly, to intimidate employees who otherwise may have cooperated with the Staff's investigation. The staff learned through various channels of a number of Justice employees who desired to speak to the subcommittee, but who chose not to out of fear for their jobs. In one instance, a department employee was reportedly willing to talk to the staff, but wouldn't testify in a deposition if a Department of Justice attorney was present.

"The Department apparently ignored its own policy in this case. It did so, in the Staff's opinion, to protect its own interests in civil litigation and at the expense, not only of the taxpayers' money, but also of the rights and interests of the very individuals it was purporting to represent."

Finally, the report noted that, while no proof was found that Meese was involved in the INSLAW affair, he certainly took an inordinate interest in the investigation. On the day before he left office, Meese took time out from farewells and office-cleaning to call an 8:30 a.m. meeting and instruct the Justice Department counsel and witnesses to refuse to participate in the INSLAW depositions scheduled for that day unless the subcommittee agreed to two conditions: 1) that counsel for INSLAW not be allowed in the deposition rooms and 2) that the witness receive a copy of the final deposition transcript.

At a hearing that day, Sen. Sam Nunn, the committee's chairman, expressed frustration with the department's lack of

*Continued on Next Page*



Thomas Wolf

*Judge George Bason*

cooperation. "It looks like you have had us jumping through one hoop after another and frankly, we are getting a little tired of it. . . . We have had one problem after another and we are right now back where we were several months ago." Eventually, Nunn's committee gave up and issued its report.

But the story may not be over. In court, Hamilton will pursue his fight. In the House, the Judiciary Committee, chaired by Rep. Jack Brooks, has announced a separate investigation into INSLAW and a related Justice Department computer procurement case. Perhaps an intrepid House investigator—or another fearless judge—will manage to break through Justice's self-protective shield, interview the moles who wanted to talk privately to the Senate subcommittee, and solve the mystery of INSLAW. Bill Hamilton has put his company back on its feet again. Judge Bason is practicing law again. But they'd both still like to know—who dun it and why. ■

VOL. 3 DECEMBER 18, 1989 NO. 51

FEDERAL COMPUTER WEEK

THE NEWS WEEKLY FOR THE GOVERNMENT SYSTEMS COMMUNITY

IN PERSPECTIVE



# DOJ Needs a Systematic Cleanup

By DAVID CHERRY

Just before Thanksgiving, U.S. District Judge William Bryant upheld damages awarded to a small Washington, D.C., software company in its suit against the Justice Department. This Nov. 22 ruling in the case of Inslaw Inc. revealed, once again, the department's arrogant and even criminal use of the bankruptcy laws to further individual ends.

Inslaw contended that Justice not only refused to pay for $2 million in services rendered but also stole its software, forcing the company to resort to the protection of Chapter 11 bankruptcy.

Adding insult to injury, Justice attempted at that point, according to Inslaw, to force the company into involuntary bankruptcy under Chapter 7, a position from which the firm would never emerge.

Bankruptcy Judge George F. Bason first ruled in Inslaw's favor in 1987. Bason wrote that Justice "took, converted, stole" Inslaw's software by means of "trickery, fraud and deceit." The government appealed that ruling but lost with Bryant's decision. "The court is drawn to the same conclusion reached by the bankruptcy court. . . . The government acted willfully and fraudulently to obtain property that it was not entitled to," Bryant wrote.

Inslaw's is not the only peculiar bankruptcy initiated by Justice and then ruled illegal. On Oct. 25 federal Judge Martin Van Buren Bostetter Jr. vacated the April 1987 involuntary bankruptcy imposed on three publishing companies in Northern Virginia: Campaigner Publications, Caucus Distributors and the Fusion Energy Foundation, all associated with frequent political candidate Lyndon LaRouche. In this case, Justice succeeded in destroying the three firms and their publications by seizing them while the bankruptcy case was pending.

The department managed this shutdown by convincing a judge that there were extraordinary reasons why seizure of the companies should precede any notice to the firms of involuntary bankruptcy proceedings. When the companies finally had their day in court more than a year after the seizures, they contended that they were not bankrupt but rather the objects of a sneak attack on the First Amendment rights of freedom of press and association with LaRouche.

The companies pointed out other irregularities in Justice's actions. First, the bankruptcy law does not apply to not-for-profit corporations, yet two of the three companies did not operate for profit. In addition, the law requires that at least three creditors join in initiating an involuntary bankruptcy, but here Justice acted alone on behalf of the government in the guise of a debtor. The three-creditor requirement was specifically designed as a protection against vindictive abuse of the bankruptcy law. Further, the basis of the debt the department claimed was itself on appeal.

In a 106-page decision, Bostetter decided not to rewrite bankruptcy law simply to gratify Justice and found that the department had brought its petition for involuntary bankruptcy "in bad faith."

But long before the decision, the bankruptcy proceedings already had served as a cornerstone of Justice's criminal prosecution of LaRouche and six of his associates, who are now in prison. "Were it not for the bankruptcies, LaRouche and six others would never have been indicted," said Warren Hamerman, chairman of the National Democratic Policy Committee.

SEE IN PERSPECTIVE, PAGE 37

# IN PERSPECTIVE,

FROM PAGE 15

Bad faith and fraud; theft, trickery, fraud and deceit. These are the words of the judges — judges who are appointed by the same executive branch of which Justice is a part. There are those who believe Justice made sure Bason was not reappointed, despite his excellent qualifications. Bason has shown independence not only in the Inslaw case but in the more important bankruptcy case of United Press International.

Inslaw seems a microcosm of the UPI struggle, according to the just-published book by Greg Gordon and Ronald Cohen, *Down to the Wire: UPI's Fight for Survival*. The political side of the UPI and Inslaw stories centers on Edwin Meese and his good friend and business associate Earl Brian.

But the case of the LaRouche-associated companies shows that it would be a grave error to reduce the problem to a former attorney general and his compatriates. They had no special motive for maliciousness toward LaRouche and those associated with him.

The problem of a cynical, corrupt, criminally minded Justice Department can never be solved by winning individual cases. Meanwhile, no property rights or constitutional liberties are safe.

President Bush and Attorney General Dick Thornburgh must recognize the disaster occurring at Justice. They must begin immediately a systematic cleanup of the department. ◀

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*Cherry was the managing editor of the* International Journal of Fusion Energy *and book editor of* Fusion, *both published by the Fusion Energy Foundation. He is now associate editor of* 21st Century Science & Technology.

The Washington Post

SUNDAY, DECEMBER 24, 1989

PR/IN/IL6 - 31

# A Big Win for INSLAW

THE DAVID and Goliath tale of one small company's fight with the federal government has been resolved by a federal court in Washington. INSLAW, a local computer software company with young owners and not much in assets, was vindicated in a dispute with the Justice Department. Charges against the government were so appalling as to be suspect. But first a bankruptcy judge and now U.S. District Court Judge William Bryant have found them to be true. Persistence and a refusal to cave in to great pressure—not to say intimidation—have resulted in a multi-million-dollar verdict for the company.

INSLAW developed softwear that is widely used by federal prosecutors to track the progress of cases and compile information about caseloads, dispositions and the characteristics of offenders. The company entered into a contract with the Department of Justice to install its system in prosecutors' offices around the country, but within months the rights of the parties were in dispute and the government began to withhold payments. The contract represented 70 percent of INSLAW's business, and as a result of the continuing conflict, the company was soon forced to reorganize in bankruptcy. INSLAW's owners charged the Justice Department with extreme bias because C. Madison Brewer, the man designated to supervise the contract, had once been employed by INSLAW's predecessor company and was forced out. How Mr. Brewer came to be put in charge of the softwear contract is not known. But U.S. Bankruptcy Judge George Bason found that he was "consumed by hatred for and intense desire for revenge against" INSLAW's president.

Judge Bason did not mince words. He found that the department "took, converted, stole" INSLAW's property "by trickery, fraud and deceit." And he found that department officials at the highest level ignored charges of ethical impropriety, dealt with INSLAW in bad faith and demonstrated "contempt for both the law and any principle of fair dealing." After he made these findings, but before his opinion was published, Judge Bason was notified that he would not be appointed to another 14-year term on the bankruptcy bench. That dismissal was not subject to review. But Judge Bason's opinion was. He must be gratified that it was so soundly endorsed by Judge Bryant, who ordered the department to pay INSLAW $6.1 million in damages—punitive damages may be added later—and all the legal fees the company has paid in its long struggle to obtain justice.

The Washington Post

# BUSINESS

WEDNESDAY, DECEMBER 27, 1989

PR/IW/IB-32

## Inslaw Seeks Court-Ordered Probe of Case

### *Firm Alleges U.S. 'Stole' Its Software*

By Willie Schatz
Washington Post Staff Writer

Local computer software firm Inslaw Inc., which last month won a $6.1 million judgment against the Department of Justice after years of litigation and charges of political retribution, yesterday opened a new chapter in its four-year struggle with the nation's top law enforcement officials.

In a suit filed in U.S. District Court here, Inslaw asked the judges to order Attorney General Dick Thornburgh to "fairly and thoroughly" investigate the company's charges that the department, in effect, stole the software it had developed to help the criminal division keep track of its cases—and then covered up its misdeed.

"We've tried everything else," Inslaw President William Hamilton

> *"We've tried everything else."*
>
> —Inslaw President William Hamilton

aid. "We've had to do our investigation because Justice isn't interested in investigating itself. We found 30 witnesses, including several within the criminal division, who know about the case. The Justice Department has interviewed exactly one of them."

Hamilton said his attorney, former attorney general Elliott Richardson, wrote Thornburgh in May asking for the appointment of an independent counsel and Thornburgh never responded.

Mike Robinson, a spokesman for the Justice Department, said the department "didn't have much to say about it."

The department, Robinson said, is still reviewing last month's judgment by the federal court here upholding a bankruptcy court's 1987 finding that Justice "took, converted, stole" Inslaw's software by "trickery, fraud and deceit," which resulted in the $6.1 million damage award.

Robinson wouldn't speculate on when the department would respond either to the earlier district court judgment or yesterday's lawsuit.

PRIIN/IB - 33

ST. LOUIS POST-DISPATCH

VOL. 111, NO. 352 Copyright 1989 THURSDAY, DECEMBER 28, 1989 (1) 5-STAR

# Software Firm Seeking Probe Of Justice Dept.

By Mark Schlinkmann
Regional Political Correspondent

A computer software firm owned by two former St. Louisans has filed suit asking a judge to force the U.S. Justice Department to begin a new investigation of the company's allegations of malfeasance by the department.

The Washington-based company, INSLAW Inc., which has been battling the department since the early 1980s, asserted that only Attorney General Dick Thornburgh can assure department employees "otherwise willing to tell the truth that their doing so will not cost them their jobs."

"The evidence assembled by INSLAW cries out for a comprehensive, thorough and hard-hitting investigation" by the department, the firm said in the suit, filed Tuesday in U.S. District Court in Washington.

Last month, U.S. District Judge William B. Bryant upheld a federal bankruptcy court decision that said the Justice Department had "willfully and fraudulently" sought to drive INSLAW out of business.

Bryant also upheld $6.1 million in compensatory damages and other fees and costs awarded the firm by the bankruptcy court.

The company, owned by William A. and Nancy Hamilton, makes software that allows prosecutors to track the progress of criminal cases in the federal courts.

The Hamiltons have contended — and Bryant's ruling affirmed — that the department sought to obtain an enhanced version of the computer program illegally and then to force INSLAW into liquidation.

The Justice Department rejected the Hamiltons' request for appointment of a special prosecutor, but indicated it would investigate some of the allegations.

But on July 18, INSLAW said, it was notified that the investigation was completed and prosecution was declined "due to lack of evidence of criminality."

William Hamilton complained in Tuesday's suit that the previous investigation was not "comprehensive, thorough or credible," and that only one of about 30 possible witnesses was interviewed.

Michael Robinson, a spokesman for the Justice Department, declined to comment Wednesday.

The Hamiltons, according to an INSLAW news release, hypothesize that "private sector friends" of former Attorney General Edwin Meese "sought to exploit their friendship" to obtain a "massive sweetheart contract."

The contract, the Hamiltons allege, would have been to install INSLAW's software on new computers in Justice Department offices around the country.

The lawsuit seeks an order to compel the Justice Department to appoint an attorney with no previous involvement in the case to start a new investigation.

"INSLAW does not contend that the facts it has assembled are sufficient to prove a criminal conspiracy," the suit states. "It does contend, however, that these facts, coupled with the bankruptcy court's findings, create an imperative need" for a closer examination.

One of the Hamiltons' attorneys is another former U.S. attorney general, Elliot Richardson.

The Atlanta Journal
THE ATLANTA CONSTITUTION

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SUNDAY, DECEMBER 31, 1989 ★★★★★

# Computer firm alleges takeover scheme by Meese associates

PR/IN/IB-34

**By Jeff Nesmith**
Journal-Constitution Washington Bureau

WASHINGTON — A small Washington-based computer firm has charged that associates of former Attorney General Edwin Meese III conspired to use their connections to Mr. Meese in an unsuccessful scheme to ruin the company and take control of its assets.

With up to $800 million worth of government contracts on the line, friends of the former attorney general manipulated government procurement policies and federal bankruptcy proceedings, the computer firm, INSLAW Inc., said in a petition filed in federal court in Washington last week.

In the document, INSLAW asks that Mr. Meese's successor at the Justice Department, Attorney General Dick Thornburgh, be forced to order an investigation of possible criminal activities.

Until now, the company said, the department has refused to undertake a "credible investigation."

The company charges that a conspiracy by Mr. Meese's associates was aimed at getting control of its unusual computer program, PROMIS, which allows federal prosecutors to keep track of myriad names, dates, facts and schedules involved in thousands of criminal cases.

A federal bankruptcy judge and a U.S. district judge already have ordered the department to pay INSLAW more than $6 million in damages growing out of contract disputes over the department's use of PROMIS for other operations.

The bankruptcy judge declared that under Mr. Meese, the Justice Department had used "trickery, fraud and deceit" to "steal" 44 copies of the program.

INSLAW has been represented in its five-year court battle by former Attorney General Elliott Richardson, who became prominent in 1973 when he resigned rather than carry out orders from President Richard M. Nixon to fire special Watergate prosecutor Archibald Cox.

The petition for the court-ordered criminal investigation moves the civil dispute between INSLAW and the department into a new realm.

Mr. Richardson said information that came to light during the civil proceedings "points to an even uglier scheme," in which friends of Mr. Meese inside and outside of government allegedly tried to get control of the PROMIS software and use it as the software component of an $800 million Justice Department automation project.

Mr. Richardson asked Mr. Thornburgh in a letter last May to turn the matter over to an independent counsel for investigation. In its petition last week, the company said Mr. Thornburgh never responded to the letter.

INSLAW, however, said it had learned from the chief investigator of the Senate Judiciary Committee that "an unnamed senior official" in the Justice Department has said the affair was "a lot dirtier for the Department of Justice than Watergate had been, both in its breadth and its depth."

Among those named in the petition was Dr. Earl Brian, a neurosurgeon and longtime associate of Mr. Meese's and former President Ronald Reagan's. Dr. Brian has figured prominently in previous investigations of Mr. Meese's family finances.

The purchase by Mr. Meese's wife, Ursula, of stock in a company headed by Dr. Brian was the subject of a conflict-of-interest investigation by a special prosecutor in 1984.

The investment company, Biotech Capital Corp., took control of Hadron Inc., a data-processing company, and through Biotech, Dr. Brian controlled Hadron.

After Mr. Meese left the White House to become attorney general in 1984, the Justice Department took steps to install the plan "Project Eagle" to computerize record-keeping functions in nearly all its offices. In 1986, the department requested bids for the $200 million first phase, and INSLAW was a contender.

The overall project had a potential value of up to $800 million, according to accounts in data-processing trade publications.

INSLAW argues that Project Eagle was designed to use the PROMIS program for managing Justice Department records.

In an affidavit attached to last week's petition, INSLAW president and principal owner William A. Hamilton said that in April 1983, well before plans for Project Eagle were made public, a Hadron officer contacted him and attempted to buy his company.

Mr. Hamilton said the officer told him Hadron intended to use its connections to Mr. Meese to obtain sizable government contracts and needed the PROMIS software.

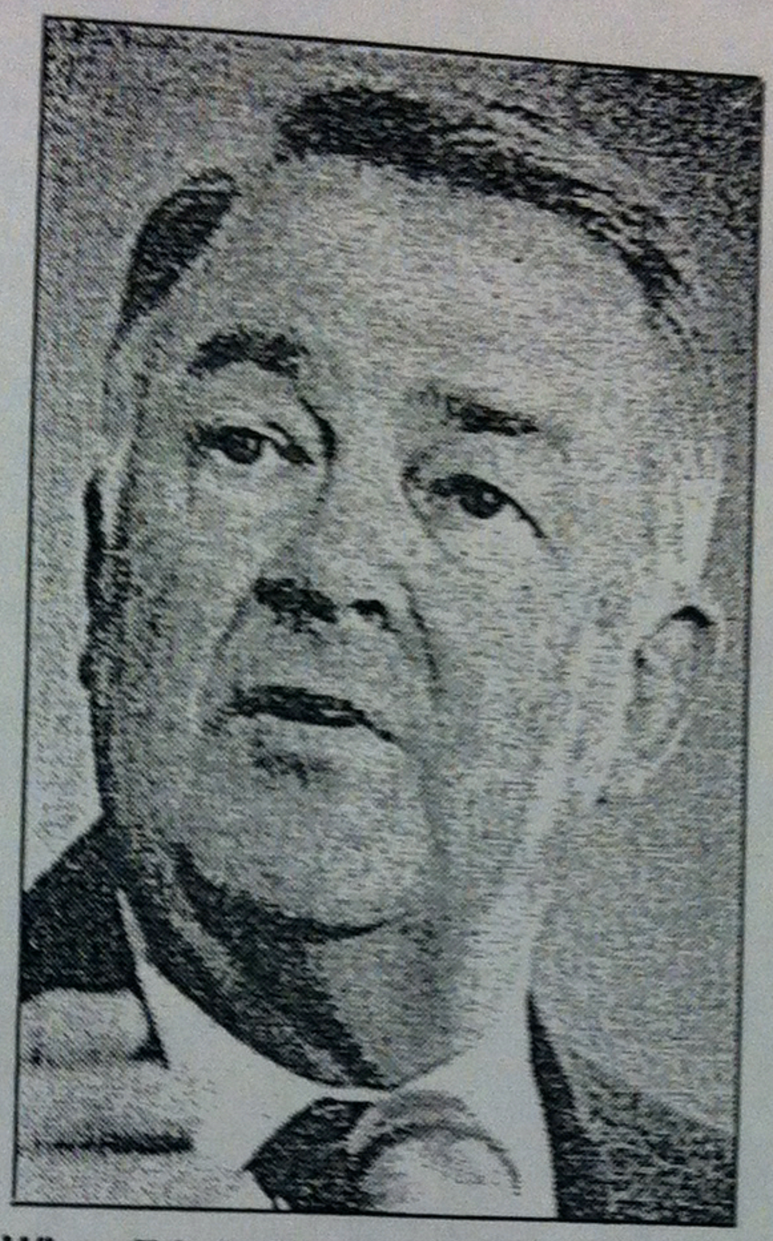
Mr. Hamilton, who had used his life's savings to start INSLAW in 1981, said in the affidavit that he declined to sell his company to Hadron and was told. "We have ways of making you sell." The Hadron officer has denied making such a statement

Mr. Hamilton said disputes developed over a separate contract between INSLAW and the Justice Department in which INSLAW was installing PROMIS software in U.S. attorneys' offices. He said payments were withheld, forcing him to take the company into bankruptcy proceedings in 1985.

U.S. Bankruptcy Judge George Bason ruled that the Justice Department attempted to force INSLAW into liquidation, a move that would have meant the company's assets, including PROMIS, would be sold.

During this time, with plans for Project Eagle maturing, Hadron kept up its efforts to get control of PROMIS. Mr. Hamilton said.

The judge blocked the move to liquidate INSLAW in August 1985.



**When Edwin Meese III** was attorney general, his friends tried to abuse his influence, a firm charges.

The Project Eagle contract, however, was awarded this year to a northern Virginia firm with no known connections to INSLAW, Hadron or Dr. Brian.

Dr. Brian, who was California's secretary of health and welfare when Mr. Reagan was governor, was not available to comment on the INSLAW allegations, a secretary in his New York office said

Mr. Hamilton eventually succeeded in getting INSLAW back on its feet, and Judge Bason in 1987 ordered the Justice Department to pay INSLAW $6.8 million in damages, plus more than $1 million in legal fees.

The judge said he had found that the department "took, converted, stole" PROMIS from INSLAW "by trickery, fraud and deceit."

The department appealed. On Dec. 23, a U.S. district judge in Washington upheld Judge Bason's ruling, trimming the amount awarded to INSLAW to $6.1 million, plus legal fees. A request for punitive damages has not been decided.

District Judge William B. Bryant said it was "strikingly apparent" that INSLAW had been forced to cope with "a hostile environment that extended from the higher echelons of the Justice Department to the officials who had day-to-day responsibility for supervising its work."

EDITORIALS
PAGE F2

# COMMENTARY

PR/IW/IB-35

## STEPHEN GREEN

# Software hardball at Justice?

Attorney General Dick Thornburgh ought to be concerned that his Justice Department has been found guilty of ripping off a small computer-software company and of trying to put the firm out of business.

Mr. Thornburgh's troubling refusal to agree to a complete investigation of the gross malfeasance against the company, INSLAW Inc. of Washington, should alarm all who believe the Justice Department must maintain a reputation for fairness and veracity.

That sufficient integrity has been lacking has been made evident by the rulings of two judges. A federal bankruptcy judge and a U.S. District Court judge have found that the Justice Department shockingly tried to steal the rights to INSLAW's software. The firm has been awarded a $6.1 million verdict and may collect millions of dollars more in punitive damages.



Richard Thornburgh

INSLAW, which developed a computer program to help track criminal defendants, had received a $10 million Justice Department contract to put the software in federal prosecutors' offices around the country. When the government suddenly began withholding payments, the company was forced to reorganize in bankruptcy court.

Bankruptcy Judge George Bason found that the Justice Department was guilty of trying to steal the rights to the software by "trickery, fraud and deceit." He found that the department official responsible for supervising the contract, D. Madison Brewer, was "consumed by hatred" for the president of INSLAW.

*see* **GREEN**, *page F4*

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*Stephen Green, managing editor of the Copley News Service Washington bureau, is a nationally syndicated columnist.*



Richard Thornburgh

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bankruptcy judge and a U.S. District Court judge have found that the Justice Department shockingly tried to steal the rights to INSLAW's soft-

# GREEN

*From page F1*

Mr. Brewer previously had worked for INSLAW and had been fired for cause.

The department reprehensibly tried to discredit the findings of Mr. Bason. After the judge refused a Justice Department request to liquidate INSLAW, he was not reappointed to the bankruptcy bench. But the department could not dismiss his ruling.

U.S. District Court Judge William Bryant upheld Mr. Bason's findings that Justice officials from the highest echelons on down showed "contempt for both the law and any principle of fair dealing." Furthermore, Mr. Bryant ruled that the Justice Department "acted willfully and fraudulently to obtain property that it was not entitled to under the contract."

Clearly, a thorough investigation of the department's conduct is warranted. In court documents, INSLAW has contended that close associates of former Attorney General Edwin Meese initiated the malfeasance in an effort to steal the software for their own financial benefits. But the Justice Department has been stonewalling efforts to determine precisely what occurred. The department has rejected a request for a special prosecutor and also has refused to cooperate with congressional requests for information about the scandal.

The Justice Department maintains that its Public Integrity Section could find no reason to proceed with a criminal investigation. The claim is highly suspect. According to court documents, the Public Integrity Section failed to interview nearly all the key witnesses.

Now INSLAW and its lawyer, former Attorney General Elliot Richardson, have asked the District Court to require the Justice Department to begin a "fair and thorough" investigation by an "attorney who has had no previous involvement in the case."

Inasmuch as the Justice Department has failed to act with propriety in the matter of INSLAW, it appears that the court will have to step in for an impartial investigation to proceed.

As Mr. Richardson noted in a letter to Mr. Thornburgh, the Justice Department seems to have been more interested in prevailing in the bankruptcy case against INSLAW than in uncovering "facts that might force it to confess error."

Worse, the department's reprehensible conduct gives the impression that it attempts to protect those guilty of the transgressions against INSLAW. If the department is involved in covering up crimes of its own employees, it has lost all claim to public confidence.

The inexcusable malfeasance in the INSLAW case has tainted the reputation of the Justice Department, one federal agency that should be squeaky clean. If Mr. Thornburgh continues to block an unbiased investigation, both the courts and Congress ought to take whatever action is necessary to rectify the INSLAW scandal.

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Chicago Sun-Times
BLUE SKIES Pages 2, 14
SATURDAY, JANUARY 6, 1990
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Dec 26 - Wint'g Mandamus.

PR/IW/IB-36

# Injustice at the Justice Dept.



James J. Kilpatrick

Two federal judges now have found something rotten at the Justice Department. They have found the ugly case of INSLAW Inc. The question is: What does Attorney General Dick Thornburgh propose to do about it?

On Nov. 22, Senior U.S. District Judge William Bryant handed down a startling opinion here in Washington; and on Dec. 20, INSLAW filed a petition for a writ of mandamus against Thornburgh. The petition seeks an independent investigation of his department's conduct.

The story is not complicated, and it is not pretty. It has to do with a young inventor, William Hamilton, who set out in 1973 to develop a computer software system that would increase the efficiency of federal prosecutors. He came up with PROMIS (Prosecutor's Management Information System). It worked well.

Building on his original invention, Hamilton then greatly enhanced the software program. In 1982 he sought and won a three-year contract with the Department of Justice to install the improved PROMIS in 20 of the largest U.S. Attorney's offices. He fulfilled the contract in February, 1985. Simultaneously he went into bankruptcy.

A great deal had gone wrong. For a period of 18 months, Hamilton had employed C. Madison Brewer as his general counsel. It was a bad relationship. Hamilton thought Brewer was doing a poor job; Brewer thought Hamilton was "crazy." In the end, Brewer was fired.

The contract with Justice was virtually the sole source of INSLAW's income. And who wound up at the Justice Department as deputy attorney general, assigned to manage the PROMIS project? C. Madison Brewer. In 1986, Hamilton brought an adversary proceeding in the District of Columbia Bankruptcy Court, alleging that Brewer had led a conspiracy within the department to drive him out of business.

Bankruptcy Judge George F. Bason Jr. conducted prolonged hearings on the matter. On Sept. 28, 1987, he handed down a stunning decision. The court upheld Hamilton's charges right down the line. Bason found that Brewer had worked with colleagues at the Justice Department to achieve the "ruination" of INSLAW. They had held up payments on the contract "in bad faith, vexatiously, and in wanton disregard of the law and the facts, and for oppressive reasons." From the bench, Bason ruled that the department "took, converted, stole INSLAW's enhanced PROMIS by trickery, fraud and deceit."

Brewer and his associates, the court found, evidenced "a complete lack of impartiality." They were "utterly hostile" to Hamilton. They sidetracked or ignored his repeated complaints. Brewer was "consumed by hatred and by an intense desire for revenge" against Hamilton.

Bason's opinion was sweeping. The evidence was clear and convincing; in some instances the evidence was "overwhelming or even irrefutable." Part of Brewer's testimony was "a deliberate fabrication." He entered a judgment against the department of $6.8 million plus nearly $1 million in attorneys' fees. The department appealed. Three months after he dropped his blockbuster, on Dec. 28, 1987, Bason was denied reappointment as a bankruptcy judge. Let us draw what inferences we may.

In the summer of 1988, Sen. Sam Nunn (D-Ga.) tried to investigate the INSLAW affair. He ran into a stone wall. Assistant Attorney General John R. Bolton scoffed at Bason's opinion.

On Nov. 22, Senior Judge Bryant came to the same conclusion Judge Bason had reached: "The government acted willfully and fraudulently to obtain property that it was not entitled to."

What now, Dick Thornburgh? Is Hamilton still "crazy"? Or were your own people in the wrong?

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FEDERAL COMPUTER WEEK

THE NEWS WEEKLY FOR THE GOVERNMENT SYSTEMS COMMUNITY

PR/IN/IB-37

# Inslaw Seeks Probe Into Possible DOJ Conspiracy

By LEIGH RIVENBARK

Washington software developer Inslaw Inc. has asked a federal judge to force the Justice Department to investigate whether its officials, including former Attorney General Edwin Meese and one of his deputies, conspired to steal Inslaw's software and drive the company out of business.

Inslaw filed suit Dec. 26 in U.S. District Court, asking the court to compel Attorney General Richard Thornburgh to begin "a fair and thorough investigation of malfeasance" against the firm.

The court is the same one that recently upheld a bankruptcy judge's blistering 1987 opinion that Justice employees defrauded Inslaw on a 1982 contract for Promis, the firm's legal case management software.

Inslaw's allegations now go far beyond the "combination of high-level hostility and lower-level vindictiveness" at Justice that undermined the original contract, according to the filing.

Attempts to buy Inslaw or gain rights to its Promis software were "linked by a conspiracy among friends of Attorney General Meese to take advantage of their relationship with him for the purpose of obtaining a lucrative contract for the automation of the department's litigating divisions," the filing said.

Inslaw has made these allegations publicly before but now supports them with testimony from about 30 witnesses. ◀

PR/IW/IB-38


# FEDERAL COMPUTER MARKET REPORT

Vol. 14 No. 1

Intelligence and Strategies for Executives in Government Procurement

January 15, 1990




## UGLY INSLAW CASE PROMISES MORE REVELATIONS OF SCANDAL AT JUSTICE DURING MEESE ERA

### INSLAW Acts To Force Atty. Gen. Thornburgh To Appoint Impartial Special Prosecutor

The ugly way INSLAW Inc. was treated by the Justice Department is being called one of the biggest federal scandals of the decade and is being ranked right alongside the Watergate and Ollie North fiascos. Two federal judges have ruled that Justice "acted willfully and fraudulently" to obtain INSLAW property by acting to drive the tiny software company out of business.

INSLAW has just filed suit claiming it was the victim of a conspiracy masterminded by confidants of former Attorney General Edwin Meese, who stole INSLAW software and planned to use it to win a "massive sweetheart" Justice contract worth up to $1 billion.

The INSLAW case revolves around inventor William Hamilton, who won a three-year, $10 million contact with Justice in 1982 to install his enhanced Prosecutor's Management Information System (PROMIS) on computer systems in 20 selected US Attorney's offices. Hamilton fulfilled the contract in February 1985, and at virtually the same time was forced to file for Chapter 11 bankruptcy.

### Old Enmity Haunts INSLAW

What happened? While he was still working to develop PROMIS, Hamilton employed C. Madison Brewer as his general counsel. Hamilton and Brewer clashed over job performance and Brewer was fired. INSLAW's later contract with Justice was virtually its sole source of income.

Ironically, it was Brewer who wound up at Justice under Attorney General Edwin Meese as deputy AG in

*(Continued on Page 2)*

## ZDS BACKS OUT OF PROTEST AGAINST UNISYS WIN OF $700 MILLION DESKTOP III

The Zenith Data Systems protest against Air Force award of the $706 million Desktop III microcomputer contract to Unisys Corp. has been dismissed by the General Services Board of Contract Appeals after ZDS agreed to withdraw its action (GSBCA, 10406-P). Unisys Government Systems Division General Manager James McGuirk says the contract "has the potential of making us the de facto standard in the government marketplace."

The Unisys grip on the market is made readily apparent by the latest General Services Administration-sponsored survey of the federal ADP base by manufacturer and hardware category *(see article, pg. 4)*. Unisys now accounts for at least a $1.483 billion slice of the $8.485 billion federal ADP base. The Unisys 17.5 percent share is followed IBM with $1.367 billion or 16.1 percent, and Digital Equipment Corp. with $1.08 billion or 12.7 percent.

While Unisys has always held a significant percentage of the government market for larger computers, it has been largely unable to penetrate the PC market, a

*(Continued on Page 9)*

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of managing the PROMIS project. In 1986, Hamilton filed an adversary proceeding in the District of Columbia Bankruptcy Court claiming that Brewer had led a conspiracy within Justice to drive him out of business. At the time, many people thought Hamilton was simply trying to make excuses for his own lackluster management skills.

Then came the blockbuster. On Sept. 28, 1987, D.C. Bankruptcy Judge George Bason Jr. ruled that Brewer had, indeed, worked with colleagues at Justice to achieve the "ruination" of INSLAW through such tactics as holding up payments "in bad faith, vexatiously, and in wanton disregard of the law and the facts, and for oppressive reasons." Moreover, Judge Bason ruled that Justice "took, converted, stole INSLAW's enhanced PROMIS by trickery, fraud and deceit."

### Brewer 'Consumed By Hatred'

Bason's opinion was devastating for Justice. The judge ruled that Brewer "was consumed by hatred and an intense desire for revenge" against Hamilton. After the INSLAW president filed for Chapter 11 reorganization, Justice employees "unlawfully, intentionally and willfully" tried to force the bankruptcy proceedings to be changed to a Chapter Seven liquidation so that Hamilton would be utterly destroyed. Justice was ordered to pay INSLAW $6.8 million plus attorney's fees.

Justice appealed and three months later Bason was denied reappointment as a bankruptcy judge. In the preceeding four years, only four of 136 federal bankruptcy judges seeking reappointment were turned down. Adding insult to injury, the judge was replaced by S. Martin Teel Jr., one of the Justice attorneys who had unsuccessfully argued the INSLAW case before Bason.

### Bason Ruling Affirmed

On November 22, 1989, US District Court Judge William Bryant, in a sharply-worded 44-page document, affirmed Judge Bason's decision on virtually every count. Not only did Judge Bryant agree that Justice had attempted to steal the software from a small, private company, but Bryant also wrote that it was "strikingly apparent" from case documents, witness testimony and depositions that "INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department."

Investigating that suspicion has not been easy. Richard Thornburgh, the Bush administration attorney general, has refused to agree to assign a special prosecutor to the case and INSLAW has begun attracting daily press headlines all over the nation.

Stephen Green, managing editor of the Copley News Service bureau in Washington, D.C., pointed out in a recent column that INSLAW contended in court documents that "close associates of former Attorney General Edwin Meese initiated the malfeasance in an effort to steal the software for their own financial benefits."

But Green said the Justice Department "has been stonewalling efforts to determine precisely what occurred...and also has refused to cooperate with congressional requests for information about the scandal." The Justice Department Criminal Division, Public Integrity Section can find no reason to proceed with a criminal investigation. Green said that claim is "highly suspect" since the section "failed to interview nearly all the key witnesses" INSLAW has said are important to the case.

### Richardson A White Knight, Again

Now, INSLAW and its lawyer, former Attorney General Elliot Richardson of Watergate "Saturday Night Massacre" fame, has filed suit in US District Court in Washington, D.C., seeking an order compelling Thornburgh and Justice to conduct "a fair and thorough investigation of malfeasance against INSLAW by officials of DOJ itself."

The suit states that Thornburgh and DOJ have a clear "duty to enforce the law as well as a duty to be fair to civil litigants," and that Attorney General Thornburgh and DOJ have "failed and refused to investigate" the theft of proprietary PROMIS case management software "through trickery, fraud and deceit," and the DOJ conspiracy to drive INSLAW out of business "without justification and by improper means."

The suit points out that in February 1988, Hamilton and his wife, Nancy, as founders and principal owners of INSLAW, submitted a memorandum to the Justice Criminal Division outlining their hypothesis for motivations behind the theft and asking for the appointment of an independent counsel or special prosecutor to conduct a full investigation.

### Justice Says 'No Criminal Evidence'

The Hamiltons contend that private sector friends of Attorney General Edwin Meese, including a former Meese colleague in Governor Ronald Reagan's California cabinet, sought to exploit their friendship with Meese to obtain a "massive sweetheart contract" for one of their companies, namely a contract to install INSLAW's PROMIS software on new computers in virtually every Justice Department office throughout

the nation.

In May 1988, the Criminal Division told INSLAW that appointment of an independent counsel was not warranted, but that it would itself investigate aspects of the allegations. A year later, on July 18, 1989, the Criminal Division closed its investigation "due to lack of evidence of criminality."

As far as INSLAW has been able to determine, however, DOJ never interviewed 29 of the 30 witnesses whose testimony INSLAW summarized in its lawsuit. The suit points out that the one witness who was interviewed, a New York State Civil Court judge, told INSLAW that the Justice effort to force INSLAW into liquidation in 1985 was part of a larger "conspiracy to get the INSLAW software."

## LeGrand Is Key Witness

Another witness cited in the INSLAW pleadings is Ronald LeGrand. While chief investigator of the Senate Judiciary Committee, the INSLAW suit says that LeGrand learned from a trusted source described as a senior Justice official with a title, that the Criminal Division was the nerve center of much of the malfeasance against INSLAW.

According to LeGrand's source it was D. Lowell Jensen, a long time confidant of Meese who served as Assistant Attorney General for the Criminal Division, Associate Attorney General and the Deputy Attorney General, who actually masterminded the effort to drive INSLAW out of business and divert its software business to political friends. LeGrand's source said Jensen relied upon two of the most senior officials in the Criminal Division to implement the scheme. LeGrand's source has also alleged that "the INSLAW case is a lot dirtier for the Department of Justice than Watergate was, both in its breadth and in its depth," and that the "Justice Department has been compromised on the INSLAW case at every level."

In May 1989, INSLAW counsel Richardson sent a letter to Thornburgh summarizing some of the more important evidence and leads developed in INSLAW's own investigation, and disclosing the identity of LeGrand and the content of the information from LeGrand's trusted source. LeGrand said Justice has not even made an attempt to learn the identity of his source. The Richardson letter to Thornburgh also drew no response and Richardson's request for a meeting with the Attorney General was refused.

## Impartial Prosecutor Sought

The INSLAW lawsuit seeks a Writ of Mandamus from the US District Court to compel a fair and thorough investigation under the direction of a federal prosecutor not already tainted by the INSLAW scandal, who would be required to report to the court on both the progress and the final results of the investigation.

Anticipating Justice objections that such a court order would usurp the department's "prosecutorial discretion," the legal memorandum filed as part of the lawsuit, also states: "Where the failure to perform a prosecutorial duty is the consequence not of legitimate discretion but of discrimination, conflict of interest, obstruction of justice, or sheer neglect, the Court Order – far from usurping an executive function – merely requires the function to be carried out."

INSLAW maintains that illegally appropriated copies of its PROMIS software are now installed on computers in each of the 42 largest US Attorney's Offices to help manage criminal prosecutions, civil litigation, and legal process debt collection work.

"Meese and Jensen launched the largest procurement in Justice history soon after Meese became Attorney General," INSLAW said. "It is known as the Uniform Office Automation and Case Management Project, and code-named Project Eagle. Justice officials have testified that Eagle is a $200 million procurement." The price could approach $1 billion if the department exercises options in the procurement to extend Eagle to the nationwide offices of semi-autonomous Justice bureaus.

According to one of the witnesses cited in the INSLAW suit, Meese, during a meeting at the White House in early 1981, disclosed plans to have Jensen spearhead a massive Justice procurement to install the PROMIS case management software in virtually every department office including the semi-autonomous bureaus such as the Drug Enforcement Administration, the US Marshal's Service, and the Immigration and Naturalization Service. ■

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# Project Eagle Vendor Goes on the Market

By LEIGH RIVENBARK

Tisoft Inc., contractor for the Justice Department's Project Eagle office automation contract, last week confirmed long-standing reports that the company is up for sale.

Tisoft was a relatively unknown systems integration company when it won the Project Eagle office automation contract in June. Project Eagle is worth a minimum of $76 million and could go far higher, above $200 million, as more Justice bureaus participate.

Patrick Gallagher, who owns 100 percent of Tisoft, last week confirmed that "there's been activity" in regard to a possible sale of the company. Gallagher would not comment on whether he might sell off the entire company or keep a portion for himself. "I can tell you that I would retain a very active role in the business" if any sale were to take place, Gallagher said.

More than one potential buyer is interested in Tisoft, Gallagher said, although he would not elaborate on who is pursuing the company.

Rumors of a possible sale have circulated since before Tisoft won Project Eagle. A source familiar with the company said Tisoft had an initial asking price more than a year ago of $7 million but raised the price to more than $30 million after winning Project Eagle.

The Project Eagle contract has meant a doubling of personnel at Tisoft, from 50 to 100 staff members since the award. The company's annual revenues have more than doubled, going from $16 million last year to a projected $40 million for calendar 1990, Gallagher said.

The contract originally was designed for Justice's Tax and Criminal divisions and the 94 U.S. attorneys' offices.

The contract's value and size are swelling as other Justice offices, including the Immigration and Naturalization Service, the U.S. Marshals Service and the Bureau of Prisons, sign on. All three are ordering from Project Eagle.

Terry Miller, president of Government Sales Consultants Inc. in Great Falls, Va., said Project Eagle is Tisoft's major government contract. The company is also the incumbent on Justice's Amicus case management and office automation system, and it holds contracts with the Department of Labor, the Pension Benefits Guaranty Corp. and the Department of Veterans Affairs. Nonetheless, Tisoft was a comparatively small player in the federal market until Project Eagle, Miller said. ◀

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PR/IW/IB-39

# After winning largest contract, founder puts Tisoft up for sale

## *Lockheed in chase for firm after $76-million contract*

By HUNTLEY PATON

Tisoft Inc., the Northern Virginia high technology firm that last summer won the largest computer contract ever awarded by the Department of Justice, has been put on the auction block by its founder and single shareholder, Patrick Gallagher, Business Journal sources said.

Fairfax-based Tisoft won the Justice Department's "Project Eagle" procurement last June — a $76-million contract for automation of Justice's 40 largest offices in the country. With options, the contract is expected to be worth $212 million and, some sources believe, even more — as much as $800 million over a number of years if Justice decides to apply it to quasi-autonomous agencies, such as the Bureau of Prisons and others.

Tisoft has been for sale for more than a year, sources said. At first, Gallagher was seeking about $7 million for the company he founded in 1980. But after securing the lucrative contract with Justice, the price tag was upped to a reported $31 million or more.

Sources said Tisoft founder Gallagher is considering a sale for personal health reasons. The sources also said Tisoft has retained New Jersey-based investment banking firm Broadview Associates to negotiate with potential buyers.

Gilbert Mintz, a Broadview partner said to be handling the Tisoft sale, declined to be interviewed by the Business Journal.

Gallagher would neither confirm nor deny efforts to sell the company.

"That's not something we would want to discuss at this time," Gallagher said last week.

Defense giant Lockheed Corp. reportedly is a leading candidate to buy the firm. The California-based company has been negotiating with Broadview "off and on" since last summer, one knowledgeable source said.

Lockheed, which has been attempting to diversify beyond weapons systems procurements in the wake of anticipated slowdowns in defense spending, has pursued the automated data processing field in recent months, but has had little luck as yet, industry observers said.

Late last month, for example, Lockheed filed a protest over an $850-million Federal Aviation Administration contract that was awarded to AT&T on Dec. 21. Lockheed was a losing bidder on the job, which calls for the supply and support of office automation workstations in FAA offices nationwide.

A Lockheed vice president said to be spearheading the company's negotiations for Tisoft could not be reached for comment last week. Sources said Lockheed has shown signs of cold feet on the potential deal, for reasons that were not clear.

When Tisoft won the Project Eagle contract last year, three losing bidders protested the award. The protesters said Tisoft was not the lowest bidder and also maintained that Tisoft's claim to have Unisys as a maintenance subcontractor was false. Justice settled the disputes by paying the three companies a reported total sum of $2 million. Officials at those companies, who reportedly agreed to not discuss the matter as part of the settlement, could not be reached for comment.

Current negotiations for Tisoft aside, public records show that Gallagher has been anticipating and preparing for a major change in control at Tisoft since at least 1986.

Records at the Virginia State Corporation Commission in Richmond indicate that Gallagher twice filed amendments to the company's incorporation papers — first in January 1986 and again on March 31 of last year, less than two months before Tisoft won the Project Eagle contract.

In the first instance, Gallagher swapped his 100 percent ownership for new "class B" shares. At the same time, he created a "class A" stock that, if issued in its entirety, would account for 56 percent ownership. Gallagher's class B shares would then account for 44 percent ownership.

To date, none of the class A shares has been issued, which means Gallagher still owns all of the company.

In essence, the changes seem to reflect an effort to account for any dividends paid to shareholders, or rather, guarantee

When Tisoft won the Project Eagle contract last year, three losing bidders protested the award.

a portion of those dividends retroactively to any party that eventually becomes owner of the class A stock.

The changes indicate that Gallagher, as the class B shareholder, would be entitled to the first $100,200 in Tisoft dividends each year before the class A shareholders received anything. After that, the class A shareholders would receive 56 cents of every dollar in dividends paid.

The restated articles of incorporation also state that "in the event of any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary," the class B shareholder, Gallagher, would would receive $30 a share, or about $3 million, before the class A shareholders received any payment.

Because the class A shares were not issued in ensuing years, the second amendment, made last year, discounts dividends paid to Gallagher since the 1986 reincorporation from the amount he would receive in the future — a move that preserves the 1986 financial guarantees made to the as-yet hypothetical class A shareholders.

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PR/IN/IB-40

# Inslaw says Meese chums led hostile takeover plots

## *Firm wants Justice to probe claim of top-level conspiracy*

By HUNTLEY PATON

One day in December 1984, a man named Daniel Tessler laid it on the line for Bill Hamilton, the embattled founder of D.C.-based computer software firm Inslaw Inc.

Tessler, chairman of New York-based investment house 53rd Street Ventures, which owned a small piece of Inslaw, told Hamilton and his wife Nancy to turn over to him the voting rights on their controlling interest in Inslaw's stock by the end of that business day.

Tessler reportedly said that if the Hamiltons refused, neither 53rd Street Ventures nor Inslaw's other backers would help raise the capital needed to fight off financial ruin. At the time, Inslaw was teetering on the edge of bankruptcy due to a string of mysteriously nasty contract disputes with the U.S. Department of Justice, the company's largest customer.

Hamilton, who indeed was forced to seek Chapter 11 protection for his company less than two months later and has been battling Justice ever since, now claims Tessler was secretly representing the business interests of Dr. Earl Brian, a close friend and political ally of former U.S. Attorney General Edwin Meese.

In addition, he says that Tessler's ultimatum was a key element in what two federal courts have already found to be a Justice Department conspiracy to run Inslaw out of business and steal its proprietary version of PROMIS, a software package designed specifically for prosecutors.

The story is part of a complex web of new allegations disclosed publicly for the first time as part of Inslaw's Dec. 26 suit in Washington's U.S. District Court. The

See INSLAW ADDS, page 16

# Inslaw adds new details in conspiracy charge

INSLAW ADDS continued from page 1

suit seeks to compel the Justice Department to investigate evidence of wrongdoing in a scandal that one Justice official reportedly dubbed "worse than Watergate" in terms of widespread corruption in the department. District court judge William Bryant in November ordered Justice to pay Inslaw $6.1 million in damages.

Inslaw claims to have evidence suggesting that several unfriendly attempts by seemingly unrelated companies to take over the company between 1983 and 1986 each were orchestrated by Brian and his investment bankers, and were directly encouraged by Justice.

In a sworn affidavit, Hamilton states that Daniel Tessler was a relative of Alan Tessler, a senior partner in the New York law firm Shea and Gould. That firm handled mergers and acquisitions work for companies Dr. Brian was involved in, including Fairfax-based Hadron Inc., which had unsuccessfully offered to buy Inslaw in 1983.

On that occasion, just weeks before Justice launched the first of its contract disputes with Inslaw, then-Hadron chairman Dominick Laiti reportedly told Hamilton that his firm intended to become the leading vendor of law-enforcement and litigation software, and that a purchase of Inslaw would be crucial to that goal.

Laiti allegedly bragged of Hadron's political connections with Meese and told Hamilton: "We have ways of making you sell."

A knowledgeable source in New York City who was close to the situation last week told the Business Journal that 53rd Street Ventures knew about Hadron's offer to buy Inslaw, even though it was not publicly disclosed.

The source, who asked not to be named, had not seen Inslaw's petition but, after hearing specific passages read over the phone, said Hamilton's assertions of a link between Tessler's 1984 ultimatum and Hadron's 1983 offer were "not inaccurate."

Laiti, who no longer is employed by Hadron but remains on its board of directors, said in a telephone interview last week: "I have no idea who I called or didn't call in 1983." He also said he could not remember whether Hadron or Brian ever wanted to acquire Inslaw.

"To this day, I still don't know a thing about (the software)," he said.

Regarding the claim that he threatened Hamilton, Laiti said, "My God, I would never say anything like that."

Two separate court rulings stemming from Inslaw's now-resolved bankruptcy case have found that the Justice Department engaged in "trickery, fraud and deceit" in an effort to steal the software and drive Inslaw out of business.

Inslaw — which in 1982 won a $10-million contract to install PROMIS software in the larger Justice offices nationwide — now is asking that Attorney General Richard Thornburgh be compelled to launch an investigation of his department in light of the courts' findings of wrongdoing.

Backed by information reportedly gathered from more than 30 sources — only a few of whom are not named — Inslaw weaves a tale of an insidious conspiracy stretching from Washington to Wall Street, dating from the earliest days of the Reagan administration and continuing now through an alleged Justice Department cover up.

Inslaw's new petition explicitly points the finger at Meese and his friend Dr. Brian, who today leads New York-based Infotechnology Inc., a publicly held investment company with stakes in about 20 companies, including Hadron and Washington-based United Press International.

In essence, Inslaw presents a "smoking gun" theory that independent counsel Jacob Stein never found when he investigated Meese in 1984 for undisclosed financial transactions between Dr. Brian, Meese's wife Ursula and Edwin Thomas, a former Meese aide.

Stein established that Ursula Meese had in 1981 purchased stock in a company controlled by Brian, using funds borrowed from Thomas, a friend of the family; he further established that, at about the same time, Brian had provided a $100,000 loan to Thomas to help him purchase a home in Washington, since Thomas was relocating to the capital to work for Meese, then President Reagan's counselor. In 1981 and 1982, Brian served in the White House and chaired a health care cost-reduction task force that reported to Meese.

Stein never concluded, however, that the transactions were linked to or would be an influence on Meese's duties as attorney general, which began in February 1985.

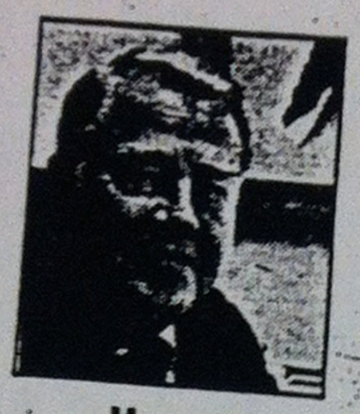
Inslaw's attorneys, who include one-time Attorney General Elliott Richardson, maintain that the transactions indicate the beginnings of a "conspiracy among friends of Attorney General Meese to take advantage of their friendship with him for the purpose of obtaining a lucrative contract for the automation of the Department's litigating divisions."

As early as 1980, Congress had published reports recommending that Justice take steps to vastly improve automation capabilities to increase departmental efficiency.

It was a goal Meese supported publicly as early as 1981 and which Justice pursued both through its procurement of PROMIS software and, in 1986, through its pursuit of "Project Eagle," a $212-million computer procurement.

According to Inslaw, Brian's plan was to gain control of Inslaw or its PROMIS software with assistance from the Justice Department and then use ties to Meese to win the Project Eagle contract as well. Inslaw's petition maintains that Brian pursued this plan years before Justice publicly disclosed plans to launch Project Eagle.

Project Eagle was awarded last year to Fairfax-based Tisoft Inc., a company in which Brian has no ownership stake or known affiliation, but which is for sale.



Meese



Hamilton

(See related story, page 5).

Meese, now a distinguished fellow at the Heritage Foundation in Washington, last week told the Business Journal he "never talked to Earl Brian about (Inslaw) in any way" and said he was not aware of the new petition filed by the software company.

"All of this was pretty much over with by the time I got to the Justice Department" Meese said. "I had no direct involvement with it. It was in the litigation stage when I arrived.".

Previously published reports have said that Meese took time out from farewell ceremonies on his last day as attorney general to instruct his people not to cooperate with Nunn's investigation of the Inslaw case unless Inslaw lawyers were kept away from depositions of Justice personnel.

Meese told the Business Journal he may have discussed procedural issues regarding Inslaw with his people on that day, but that the details of what he reportedly said were false.

Inslaw claims the Justice Department "discussed in advance" and encouraged a Pennsylvania company's attempted hostile takeover of Inslaw in 1985: The petition names a former vice president of Systems and Computer Technology, the bidding firm, who allegedly said Justice officials "strongly hinted that Inslaw's contract disputes would be settled quickly" once a takeover was completed and Hamilton was ousted.

According to the petition, two other former SCT employees told Inslaw investigators that SCT executives also discussed the hostile bid for Inslaw with top officials at Allen and Co., a New York company that has acted as Brian's investment banker on numerous occasions. Documents filed with the U.S. Securities and Exchange Commission show that Allen and Co. subsequently invested about $5 million for a 7.8 percent stake in SCT.

According to other witnesses listed in the petition, Allen and Co. officials also had discussed fund-raising strategies with Hadron in 1983, shortly before that firm offered to buy Inslaw.

A key source in the Inslaw petition is Ronald LeGrand, who was the chief investigator for the Senate Governmental Affairs subcommittee under Sen. Sam Nunn. LeGrand conducted an investigation in the Inslaw matter, but Nunn dropped the effort after complaining publicly that Justice had been uncooperative with the investigation.

In April 1988, LeGrand — who has acquaintances in Justice from the days when he was employed by the Drug Enforcement Agency — reportedly told Bill and Nancy Hamilton that a "deep throat" senior-level Justice official told LeGrand that the Inslaw scandal was "a lot dirtier for the Department of Justice than Watergate was," and had compromised the agency "at every level."

Many of the details included in Inslaw's petition are similar or identical to those Inslaw presented to the public integrity office of Justice's criminal division in February 1988, but which allegedly never were investigated or acted upon. (Inslaw claims that as of last month, Justice had interviewed only one of the 30 individuals who spoke with Inslaw investigators and whose names Hamilton had passed onto Justice in 1988.)

Inslaw lists as co-conspirators Justice's PROMIS project manager, C. Madison Brewer, who once was an Inslaw employee until Hamilton fired him; and D. Lowell Jensen, a longtime Meese associate and then-assistant attorney general who, during the 1970s, was involved in the development of a software package that competed unsuccessfully with Inslaw's PROMIS in a State of California procurement.

Both the 1988 bankruptcy court ruling and last fall's federal appeals court ruling implicated Brewer, but not Jensen, who today is a federal judge in San Francisco. The courts did find that the "upper echelons" of Justice had a hand in the Inslaw scandal.

The Justice Department has had no comment on the Inslaw petition but must file a reply by Feb. 26 with the court. It has been widely speculated that Justice will appeal the November appeals court ruling awarding Inslaw $6.1 million in damages, though no such action has been taken as yet.

Brian and a number of other witnesses or alleged participants in the Inslaw matter could not be reached for comment.

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# Inslaw sues again, Justice to appeal

By HUNTLEY PATON

Washington-based Inslaw Inc. last week filed a motion with a government contract appeals board seeking about $2 million in payments that were withheld by the U.S. Department Justice in a series of contract disputes in the mid-1980s.

Those disputes, which forced the computer software firm into bankruptcy, were the subject of two federal court rulings, both of which found that Justice officials tried to drive Inslaw out of business and gain control of the company's legal case-management software through "trickery, fraud and deceit."

Despite those rulings, Inslaw has not received any of the payments that were withheld originally in the three-year, $10 million contract, which ended in 1985. The company's recent motion was filed with the Department of Transportation Board of Contract Appeals, which has jurisdiction over disputes involving Justice procurements.

In a related action, the Justice Department last week filed a notice of intent to appeal the decision handed down in November by U.S District Court judge William Bryant, which awarded Inslaw $6.1 million in damages.

Bryant's ruling upheld a 1987 bankruptcy court decision citing Justice's culpability. Inslaw since steered its way out of Chapter 11 reorganization.

The new developments are only the latest in what has been a near-constant state of litigation between the company and the

Software firm seeks $2 million in its latest court action against the U.S. government.

government agency since 1985. Shortly after Bryant's ruling last November, Inslaw filed a petition seeking to force Attorney General Richard Thornburgh to conduct a full investigation of his department's conduct in the Inslaw affair.

That petition alleges that the conspiracy to run Inslaw out of business was carried out to benefit the financial interests of close friends of Edwin Meese, former attorney general. Meese and others named in the action have denied the allegations in interviews with the media.

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# Justice Dept. Will Appeal Ruling That It Stole Company's Software

By Vanessa Jo Grimm
GCN Staff

The Justice Department late last month announced it will appeal a federal court ruling that the department stole case management software from Inslaw Inc.

The department filed the notice with the U.S. District Court for the District of Columbia. The notice marks the latest round in the four-year battle between Justice and the Washington software company.

Late last fall, senior District Court Judge William B. Bryant agreed with a 1987 Bankruptcy Court ruling that Justice officials stole from Inslaw advanced versions of the case management software, known as the Prosecutors Management Information System or Promis. Justice officials continually have denied wrongdoing.

Meanwhile, Inslaw has filed a motion with the Transportation Department Board of Contract Appeals asking that Justice be forced to pay about $2 million in back payments from the company's 1982 contract with the department.

The appeals board has jurisdiction over Justice contract disputes and heard the original complaints made by Inslaw.

Inslaw and Justice also are awaiting an audit report on the contract from the Defense Contract Audit Agency.

Inslaw has asked the board to require Justice to assign the settling up of the contract to a contracting officer in another agency.

Justice awarded Inslaw a contract in 1982 to provide case management software for U.S. attorneys' offices. But after halting much of the contract in 1985, Justice stopped payments to Inslaw.

Inslaw president William A. Hamilton has charged that Justice tried to force the company into bankruptcy and get Promis into the public domain.

The Inslaw motion said in similar cases the DOT board has ruled that Bankruptcy Court rulings are binding. The District Court ruling should be enough grounds for the board to order Justice to release the $2 million, Inslaw said.

Justice officials would not comment on Inslaw's DOT appeals board filing because the case still is being litigated.

the Fourteenth Amendment, the Federal Circuit noted that a patent infringement suit is not the appropriate legal route for vindication of a takings claim.

## No Injunction Against Use of Term "Software Exchange"

Although finding that the term "Software Exchange" is most likely not generic as applied to the plaintiff's business of marketing used chip-based video games, and that an injunction would not alter the status quo materially, a district court recently denied a preliminary injunction on a Lanham Act claim against a company in a similar business, concluding that the plaintiff had failed to present sufficient evidence that the term has acquired secondary meanings or actual evidence of consumer confusion which could support the finding of secondary meaning. In considering the genericness issue, the court drew a distinction between use of the term by businesses that handle floppy disk-based games and the parties' businesses, which involve videos incompatible with computers. *Software X-Change, Inc. v. Software Exchange, Inc.*, (No. C-89-501-R (M.D.N.C. November 2, 1989).

Plaintiff Software X-Change, Inc., which originally operated under a different name, among other things, sells used videos, including computer games, by mail order. It began selling the used videos under a service it called "Software X-Change," and later adopted that as its name, but did not register the "Software X-Change" mark. Defendant Software Exchange, Inc. was incorporated thereafter to distribute computer games, and uses the initials SEI as its primary corporate designation. Although the plaintiff provided circumstantial evidence of secondary meaning in support of its motion for a preliminary injunction, no consumer surveys or sufficient evidence of actual consumer confusion were adduced. The court stated that the term in issue deserves protection from monopolization until there is evidence that it denotes to the public something more than its descriptive qualities.

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# Bankruptcy

## Justice Department Violated Automatic Stay in Software Developer's Chapter 11 Reorganization

A district court recently affirmed a bankruptcy court's ruling that the U.S. Department of Justice (DOJ) unlawfully violated the automatic stay provision of the Bankruptcy Code by exercising dominion and control over and proliferating the implementation of the debtor's proprietary software, and by attempting to convert the pending bankruptcy from a Chapter 11 reorganization to a Chapter 7 liquidation. The district court affirmed the damages award for the latter violation and reduced somewhat the award as to the former violation in light of the terms of standard license agreement on which the bankruptcy judge had based its award. *United States v. Inslaw, Inc.*, Nos. 88-0528, 88-0696, 88-0697 and 88-0698-WBB (D.D.C. November 22, 1989).

Inslaw's predecessor developed the Prosecutor's Management Information System (Promis) under contract to the Law Enforcement Assistance Administration. Inslaw was later formed as a for-profit corporation to continue to market and enhance Promis and to develop new proprietary computer software products, at a time when its predecessor had existing contracts with DOJ. In return for funding from the Executive Office of the United States Attorneys (EOUSA), Inslaw agreed to make five specific enhancements to Promis (the BJS enhancements). Under terms of another contract with DOJ, EOUSA agreed to pay for a pilot/feasibility study to determine whether Promis could be installed successfully in large U.S. Attorney Offices in two states, and Inslaw's predecessor was to develop a word processing version of Promis which would be introduced into two smaller U.S. Attorney Offices. DOJ later decided to implement the software used in the pilot project, and sought bids on, and later awarded Inslaw, the contract to develop and implement a litigation management system, which was to involve implementation of the computerized pilot version of Promis as supplemented by the BJS enhancements in 20 large U.S. Attorney Offices, creation and implementation of a non-computerized version of the software for word processors in the remaining U.S. Attorney Offices, and provision of necessary training, maintenance and support for three years.

Prior to execution of the contract, and for some period thereafter, the parties conducted extensive negotiations about ownership of certain Promis enhancements which Inslaw contended had been developed under private funding and to which it claimed proprietary rights, and during the performance of the contract, the parties continually disagreed about payments and rights to the enhancements. DOJ contended that if proprietary enhancements had been added, the onus was on Inslaw to prove this. Despite several efforts by Inslaw to demonstrate the private financing of the enhancements, the government did not accept Inslaw's methodology for allocating funding, yet declined to provide an alternative methodology on Inslaw's request.

Inslaw could not install its software in the individual U.S. Attorney Offices because of the government's failure to procure computer equipment, but allowed U.S. Attorney Offices to connect up to the equipment through telephone lines to Inslaw's computer center and to use the enhanced version of Promis that Inslaw had been providing to its non-DOJ customers. Inslaw continued to assert that DOJ had no right to the enhanced software that U.S. Attorney Offices were using, and that the software had been providing to

DOJ as a courtesy. DOJ formally requested a copy of the enhanced Promis software, indicating that the request was motivated by concern over Inslaw's financial viability. In an effort to respond to this expressed concern, Inslaw first offered to provide DOJ with enhanced Promis if the government would agree to limit distribution to 94 U.S. Attorney Offices and the EOUSA. The government insisted that under its contract, Inslaw was required to provide software without restriction on distribution. DOJ also rejected Inslaw's proposal that it place copies of the disputed software in escrow so that the government would receive the enhanced software and its interests would be protected should Inslaw become bankrupt, and threatened to withhold advance payments until Inslaw provided a copy of the enhancements. Ultimately, the parties entered into a modification of the contract which provided that Inslaw would deliver to the government all Promis programs and supporting documentation developed for or relating to the contract, the government would restrict the distribution of the software to the EOUSA and the 94 U.S. Attorney Offices pending resolution of the dispute, and DOJ would continue to make advance payments to Inslaw. The modification also recited that the parties reaffirmed their understanding that their initial contract governs the rights to the disputed software. Shortly after the parties agreed to this modification, the government terminated the portion of the contract which would have automated 74 offices using word processors, and the parties disputed whether the modification applied to all 94 U.S. Attorney Offices originally contemplated by the contract or instead applied only to the remaining 20 large offices.

Inslaw installed Promis in the 20 large U.S. Attorney Office, implementing the enhanced version of the software. Shortly before completing its contract with DOJ, Inslaw filed for reorganization under Chapter 11 of the Bankruptcy Code. From the outset of the bankruptcy court proceedings, DOJ represented itself as a major creditor of Inslaw. Prior to Inslaw's bankruptcy, DOJ had developed a plan to implement Promis beyond the 20 offices called for by the contract. When Inslaw learned of DOJ's plans while in bankruptcy, it protested to DOJ that the government's efforts to copy and use Promis were unauthorized. DOJ nevertheless automated 23 additional offices using Promis, and Inslaw subsequently filed a claim against DOJ for the value of the standard licensing fee for the number of offices which were then to receive the allegedly unauthorized copies of the software, and instituted an adversary proceeding against DOJ in which it sought declaratory relief, an order enforcing the automatic stay, and damages for wilful violation of the automatic stay. At some point, DOJ also informally sought conversion of the matter from a Chapter 11 reorganization to a Chapter 7 liquidation. The bankruptcy court ruled that DOJ had violated 11 U.S.C. § 362(a) (the automatic stay provision) and found the government liable for compensatory damages (eventually awarding $6.79 million) plus costs and attorneys' fees. The court ruled in the alternative that if § 362(a) did not allow recovery against the government, the government was in contempt of court for its actions, for which the court assessed compensatory damages of $1,000 and attorneys' fees and costs but reserved for later decision the question of whether punitive damages could be awarded against the government. The court also found that the DOJ project manager overseeing the DOJ-Inslaw contract activities, a former Inslaw employee who had left Inslaw on bad terms, had set out to harm Inslaw in his DOJ position, and that through him and others who acted with him and/or implicitly condoned his efforts, DOJ converted Inslaw's enhanced Promis by trickery and deceit and was using and intended to continue to use Inslaw's enhanced Promis in a fashion not contemplated by the contract and in such a manner as to damage Inslaw's estate. The bankruptcy court also issued a declaratory judgment that Inslaw was sole owner of the proprietary enhancements to Promis, and that DOJ wrongfully had exercised dominion and control over Inslaw's software, and, as a result, had violated the automatic stay; issued an injunction directing DOJ to be bound by the terms of Inslaw's standard license agreement and requiring DOJ to compensate Inslaw under terms of the license agreement from the date Inslaw had filed for bankruptcy; issued an injunction preventing several DOJ official who had been involved in administering the Inslaw contract from further participation in the litigation or in any decision involving the use of Promis at DOJ; and issued an order prohibiting DOJ from electing to use only the older version of Promis without first compensating Inslaw for the cost of removing the enhancements.

DOJ appealed from these rulings, contending, *inter alia*, that, under the doctrine of sovereign immunity, the bankruptcy court was without jurisdiction to decide the case, and, even if it had jurisdiction, it should have deferred to an agency board of contract appeals, and that the facts did not support the conclusion that the automatic stay had been violated. DOJ claimed that it was entitled to *de novo* review, and argued that under 28 U.S.C. § 157(d), withdrawal of the proceeding to the district court was required, or alternatively, the bankruptcy court's findings should be treated as contempt rulings.

The district court began by noting that, absent waiver, the United States is immune from suit, that only Congress can waive sovereign immunity, and that waivers are to be strictly construed. The bankruptcy court correctly had concluded that DOJ had waived its immunity under 11 U.S.C. § 106(a) (which provides that a governmental unit is deemed to have waived sovereign immunity "with respect to any claim against such governmental unit that is property of the estate and that arose out of the same transaction and occurrence out of which such governmental unit's claim arose") and 11 U.S.C. § 106(b) (which permits offset against an allowed claim of interest of a governmental unit "for any claim against the governmental unit that is property of the estate"). 11 U.S.C. § 106(c) provides that, except as provided in subsections (a) and (b), and notwithstanding any assertion of

sovereign immunity, any provision of the Bankruptcy Code that contains the words "creditor," "entity," or "governmental unit" applies to governmental units, and any determination by the court of an issue arising under any such provision binds the governmental units. In this case, the government conceded that its sovereign immunity had been waived as to declaratory and injunctive relief entered pursuant to the automatic stay, and so, the district court reasoned, at a minimum the bankruptcy court had jurisdiction to assess the liability of DOJ for violating the automatic stay and had jurisdiction to issue declaratory and injunctive relief pursuant to the liability finding.

For a bankruptcy court properly to award compensatory damages, attorneys' fees and costs, jurisdiction must be found pursuant to § 106(a). The district court found that the bankruptcy court correctly had concluded that the filing of a formal proof of claim was not a prerequisite to a finding of a waiver of sovereign immunity pursuant to § 106(a): the originally proposed version of § 106 would have required such a filing, but the statute as enacted contains no such language; § 101(4) defines "claim" broadly, and the notion of the filing of a formal proof of claim seems inconsistent with this section as well as with the language of § 106(a). The government took numerous affirmative steps to assert its claims against Inslaw, behaved like a creditor, involved itself directly in the deliberations of Inslaw's efforts to reorganize, and made express representations that it was a creditor during bankruptcy court proceedings and on appeal to the district court, and asserted more than $1 million in claims against the debtor in another forum (a government contract appeals board, an injunction against which action the district court earlier had denied). As such, it had waived its immunity. And, the district court reasoned, even if some proof of claim requirement could be read into the statute, the government's actions constituted an informal proof of claim. A proof of claim must "state an explicit demand showing the nature and amount of the claim against the estate, and evidence an intent to hold the debtor liable." *In re Anderson-Walker Industries, Inc.*, 798 F.2d 1285, 1287 (9th Cir. 1986). Thus, although mere notice of the claim will not suffice, when it is apparent to the bankruptcy court that the creditor intends to seek recovery from the estate and when this intent is made known before the bar date, the informal proof of claim has been filed properly. Moreover, because § 106(a) formed the basis of the waiver of immunity, the waiver was complete: the entire Bankruptcy Code applies, including those provisions, such as § 362(h), which provide for monetary damages.

As to the government's argument that, even if the bankruptcy court had jurisdiction over the parties, it should have deferred to a specialized agency appeals board, the district court pointed out that this argument assumed that Inslaw's claims against the government were rooted in government contract law. However, the issues in this case did not involve liquidation of a contract claim. Rather, Inslaw's case was squarely grounded in bankruptcy law, in that Inslaw was seeking relief for alleged violations of the automatic stay provision of the Bankruptcy Code.

Rejecting the government's urging that the district court review the bankruptcy court's findings *de novo*, the court concluded that the adversary proceeding in issue was a core proceeding and so the appropriate standard of review was that set forth in Bankruptcy Rule 8013, which provides for review using the clear error standard. The government's contention that the bankruptcy court's findings of fact were made under the court's general contempt power also were misplaced: Inslaw's allegation that the government illegally attempted to convert the Chapter 11 matter into a Chapter 7 liquidation unquestionably fell within the scope of 28 U.S.C. § 157(b)(2)(A) (which provides that core proceedings include matters concerning the administration of the estate). Similarly, Inslaw's contention that DOJ illegally appropriated Inslaw's property and sought to distribute it without regard to Inslaw's claim for proprietary interest, at a minimum, concerned administration of the estate and also was a counterclaim (§ 157(b)(2)(C)). Because both the alleged illegal conversion and misappropriation of property properly could be contested in an adversary proceeding, the powers vested in the bankruptcy court under the automatic stay provision did not violate the Constitution (as the government had claimed) and, because under 11 U.S.C. § 362(h) a debtor may recover actual damages, including costs and attorneys' fees, the standard of review was not the standard applicable for review of findings of civil contempt.

The district court also rejected the government's argument that the chief judge of the bankruptcy court erred in refusing to agree to withdraw the matter to the district court. 28 U.S.C. § 157(d) provides that the district court shall withdraw a proceeding if it determines that resolution of the proceeding requires consideration of both Title 11 and other federal laws regulating organizations or activities affecting interstate commerce. The relevant test of whether a bankruptcy matter should be withdrawn to a district court is whether the district court can make an affirmative determination that resolution of the claims will require substantial and material consideration of non-Bankruptcy Code federal statutes; only those cases which require a significant interpretation of federal law must be withdrawn. However, in this case, the allegation of illegal conversion of Inslaw's bankruptcy case implicates no federal law other than the Bankruptcy Code. The adversary proceeding required analysis of the scope of the work and an interpretation of a contract, which in turn might require a court to apply federal procurement regulations, but it was not apparent that there need by any substantial interpretation of federal law by the bankruptcy court.

As to the conclusions of law, the district court found that the facts supported the bankruptcy court's findings of multiple violations of the automatic stay. It was not necessary to consider which party was entitled to the enhanced Promis software under Inslaw's contract with DOJ, because, at a minimum, DOJ knew that Inslaw disputed the government's claim of own-

ship of enhanced Promis, and knew that Promis represented Inslaw's principal asset and that without ownership of the software, the company's economic viability was threatened. Rather than follow the procedures established by the Bankruptcy Code for resolving its dispute with Inslaw and seeking relief from the automatic stay, DOJ violated the automatic stay by pursuing a course of self-help, claiming enhanced Promis to be its property and installing it in at least 45 offices throughout the U.S., having fraudulently obtained and then converted enhanced Promis to its own use. Thus, the government acted wilfully and fraudulently to obtain property to which it was not entitled. Once the software was in its possession, there was no evidence that DOJ ever negotiated in good faith over the existence of the proprietary enhancements claimed by Inslaw. Expert witnesses had demonstrated that Inslaw had enhanced the software with private funds, and the contract did not entitle DOJ to those enhancements. By failing to acknowledge or accept Inslaw's claims, the government continued its fraudulent behavior toward Inslaw, behavior which persisted long after Inslaw filed for reorganization and which constituted a violation of the automatic stay by exercise of control over property that rightfully belonged to the estate. As to the government's abortive attempt to convert Inslaw's reorganization into liquidation, the district court stated that it could think of no greater violation of the automatic stay than to cause demise of the corporate entity.

In considering whether the award of damages by the bankruptcy court was proper and within the court's authority, the district court noted that 11 U.S.C. § 362(h) directs that an individual injured by any wilful violation of a stay provided by the section "shall recover actual damages, including costs and attorneys' fees." The bankruptcy court had calculated damages in accordance with the perpetual license fee for Promis. The government argued that this was not a proper measure of damages, that it overstated the value of Inslaw's actual harm, and that the court's order effectively forced the government to enter into a contract with Inslaw. However, the district court found that the bankruptcy court's conclusion was supported by the record evidence and as a matter of law, and noted that other courts have held that license fees are an acceptable measure of damages in numerous contexts, including misappropriation of intellectual property as a result of tortious conversion. *Compumarketing Serv. Corp. v. Business Envelope Mfg., Inc.*, 342 F. Supp. 776, 778 (N.D. Ill. 1972). However, 12 percent of Inslaw's standard license fee covers the first year's maintenance charge for the software, and because the bankruptcy court had not forced the parties to enter into a contract and the parties agreed that Inslaw never had provided the corresponding maintenance services, the district court reduced the compensatory damages award by this amount.

The district court concluded that attorneys' fees properly had been awarded: contrary to the government's position, corporations may be awarded attorneys' fees under 11 U.S.C. § 362(h). The district court found it unnecessary to reach the question of whether the attorneys' fee award was justified under the bankruptcy court's alternative ground therefor, that of the "bad faith" exception to the American rule pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(b).

## Pre-Petition Transfers of Software and Money Avoided as Preferences

A district court recently ruled that a bankrupt software distributor was entitled to recover as preferential transfers the cash amount of certified checks paid to a manufacturer and the entire wholesale value of software programs returned to the manufacturer within 90 days before a bankruptcy petition was filed. The court found that the bankruptcy court properly had rejected the manufacturer's proposed software valuation, which was based on value to the manufacturer, calculated at the cost of "rerunning" returned programs. *In Re First Software Corp.*, No. 88-886-WF (D. Mass. November 17, 1989).

The debtor, First Software Corp., was a distributor of Computer Associates (CA) software until 1986. In December 1985, when the debtor was in arrears on its account, the debtor advised CA by letter that it was receiving outside financing, but that the financing arrangement required that CA agree to the outside creditor's senior lien and security interest in any inventory in which the vendor also might have a security interest, lien, right or claim. CA endorsed the agreement, but in an accompanying and follow-up letter outlined conditions thereon, which included a requirement that First Software pay approximately half of the outstanding balance owed within approximately 10 days, and pay the remaining amount within one month. First Software did not comply, but did pay more than half of its outstanding balance within two days after the date for final total payment set by CA; later the parties agreed to a schedule of payments that First Software subsequently was unable to meet. Eventually, after heated exchanges and threats by CA to sue, to reveal First Software's financial problems to the press, and to commence an involuntary bankruptcy proceeding, the parties agreed that First Software would pay $450,000 by certified check and return approximately $1,500,000 worth of CA's programs. First Software returned the programs a few days after the agreed-upon date, following CA's threat of suit, and also paid $200,000, and, a few days thereafter, the remaining amount due, both by certified check. CA segregated the programs First Software had returned, and, except for a retender of the programs to First Software approximately two months later (in response to First Software's initiation of an adversary proceeding against CA), made no attempt to sell or dispose of the programs. Less than three weeks after delivery of the second certified check, First Software filed its Chapter 11 petition, and commenced the adversary proceeding in issue for recovery of the allegedly

preferential transfers of property and monies. CA then formally tendered the return of any and all goods it had recovered. The debtor's counsel rejected the tender. The parties disagreed on the value of the returned software as of the time of the tender, but agreed that the programs were essentially worthless at the time of the court's decision, in part because of the subsequent release of upgraded versions of two of CA's most popular programs.

Section 547(b)(1) through (5) of the Bankruptcy Code provides that a trustee may avoid a transfer of property as a preference if the transfer: (1) was made to or for the benefit of a creditor; (2) was made for or on account of an antecedent debt owed by the debtor before the transfer was made; (3) was made while the debtor was insolvent; (4) was made on or within 90 days before the date of the filing of the petition or between 90 day and one year before the date of the filing of the petition if the creditor at the time of the transfer was an insider (four conditions which the parties agreed have been met); and (5) enables the creditor to receive more than the creditor would receive if the case were a Chapter 7 matter, the transfer had not been made, and the creditor had received payment of the debt to the extent provided by the Bankruptcy Code.

CA contended that in determining whether a transfer enables the creditor to receive more than it would in a liquidation, the court should look to that which the creditor received, rather than to that which the debtor lost, in the transaction. CA argued that the value to it of the returned property was only approximately 10 percent of the invoice price, and that the product return merely enabled it to avoid the cost of "rerunning" the returned programs, but did not give it the means, power, or opportunity to obtain the invoice amount by reselling the product through ordinary distribution channels (although CA admitted that it could have resold the returned programs through such channels), because it had the ability and opportunity to make sales with or without the product return. And, if 10 percent were the correct measure of value of the programs, CA urged, there would be no preference because this amount was smaller than the amount which would have been found to be the liquidation value of the software in a Chapter 7 proceeding.

However, as the bankruptcy court found, because the parties disagreed as to the value of property transferred, it was necessary to consider the record evidence, including the credit memorandum, the amount of the invoice price, testimony of CA's president (who unequivocally stated that CA could have resold the programs soon after their return) and of the debtor's former CEO and current president, and the fact that CA voluntarily made no attempt to sell the programs to other distributors. The bankruptcy court's assessment of this evidence was not clearly erroneous.

And, the disbursing agent had satisfied its burden of proof under §547(b)(5) as to CA's liability. Although the programs had declined in value by the time of CA's retender, CA failed to carry its burden of rebutting the debtor's testimony as to the value of the programs on the date the debtor returned them. CA had credited the debtor's account in the invoice amount, and, if there were evidence, other than CA's president's self-serving testimony that the value was approximately 10 percent of the invoice amount, to show that CA's contemporaneous determination of the market value of its product was incorrect, CA had the burden of producing it.

The bankruptcy court did not abuse its discretion in concluding that value, rather than property, should be "returned" to the debtor pursuant to §550. Rejecting CA's argument that a judgment for value is appropriate only when the product itself has declined in value because of improper use, storage or conduct by the preference defendant, the district court pointed out that §550 provides that the trustee may recover for the benefit of the estate the property transferred, or, if the court so orders, the value of the property. The Bankruptcy Code does not provide guidelines as to when each of the two is an appropriate remedy. But when a debtor cannot be made whole by the return of property lost through an avoidable transfer because of the depreciation in value of the property, the court may enter a money judgment equal to the property's value as of the date of the petition. Furthermore, the bankruptcy court correctly had reasoned that on the date that the debtor returned the property to CA, there was nothing to prevent CA from reselling the property for the invoice amount. According to the district court, it would be inequitable to permit CA to profit, at the debtor's expense, from its own miscalculation or malfeasance.

Although acknowledging that the debtor's two payments by certified check were preferences under §547(b), CA contended that it should not be required to repay those amounts, because the payments were made in the ordinary course of business and therefore protected by 11 U.S.C. §547(c)(2), and argued that it improperly had been prevented from satisfying the burden of establishing this affirmative defense by the exclusion under Fed. R. Evid. 408 of a letter from the creditor's committee counsel to CA concerning preference payments. In the letter, counsel offered a reduction of amounts owned to facilitate prompt settlement and repayment, described a proposed statistical method for uniformly determining which payments would be deemed "in the ordinary course of business," and placed a dollar value on the debtor's present liability concerning the two checks. CA argued that, if the "standard" delineated in the letter for determining whether payments were made in the ordinary course of business were used, the preference liability would be vastly reduced. However, the letter, virtually identical to that sent to other potential creditor defendants, was designed to induce potential defendants to compromise their preference liability, and as such, was made in the course of a settlement offer. And, the evidence aptly demonstrated that the payments, made by certified checks issued under formidable threats by CA, were classic forms of payment not made in the ordinary course of business. Although

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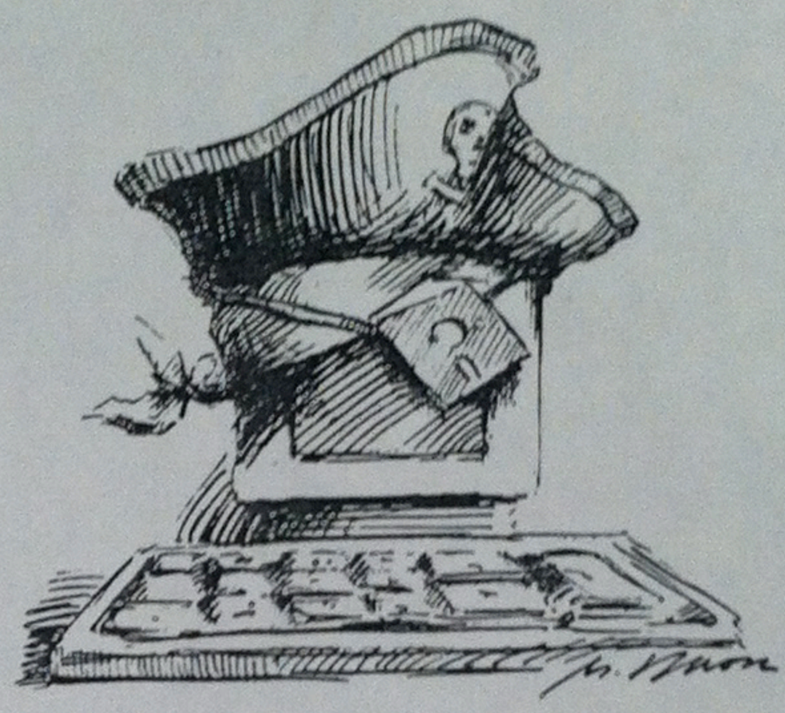


# Software Scandal?

Seated at a conference table in a major Washington law firm, William A. and Nancy B. Hamilton described, in monotones, a Meese Justice Department vendetta against INSLAW Inc., the Hamiltons' computer software company that, the couple says, was almost destroyed by official skulduggery.

Their story begins as a routine government-contracts dispute that was transformed into a complex tale of jealousy, revenge and, ultimately, greed.

Now three current or former Republican Attorneys General are embroiled in the case, which an unnamed department version of "Deep Throat" has described in court papers as "a lot dirtier for the Department of Justice than Watergate ever was."



INSLAW, after winning a three-year, $10 million contract for software in 1982, became enmeshed in a series of bitter contract disputes with Justice that pushed the company into bankruptcy proceedings. After years of litigation, two federal courts have sided with INSLAW's charges that the department cheated the company by stealing its software for itself.

For the Hamiltons, money may be forthcoming. But they say they also want justice. They want a federal court to order Attorney General Dick Thornburgh to conduct a criminal investigation into the mess and to examine charges of misconduct by former Attorney General Edwin Meese III and his friend, D. Lowell Jensen—who was once an INSLAW competitor, headed the Criminal Division under Meese and is now a U.S. District Court judge in San Francisco. Both Meese and Jensen have denied the company's charges.

Thornburgh faces a delicate situation. *The Washington Times*'s editorial page and columnist James J. Kilpatrick have supported INSLAW. And in a letter to Thornburgh last year, former Attorney General Elliot L. Richardson, the Hamiltons' attorney, criticized Justice's handling of the case and urged the appointment of a special prosecutor: "It is clear, in any case, that the department is conducting an all-out, no-holds-barred defense of the civil suit while dragging its feet on the criminal investigation. The department would rather win the civil case than uncover facts that might force it to confess error."

Make no mistake, belief in all the Hamiltons' allegations requires acceptance of perhaps the most elaborate conspiracy theory since Watergate. Like all conspiracy theories, this one must be swallowed whole or not at all. And finding out exactly what happened to INSLAW has not been easy.

Capitol Hill Democrats, ever vigilant for Republican villainy, have conducted investigations of the matter and haven't come up with much. Last September, the Senate Governmental Affairs Permanent Subcommittee on Investigations, chaired by Sam Nunn, D-Ga., issued an 80-page report saying that the subcommittee had found no proof to back up INSLAW's charges of a criminal conspiracy. But the report also said the subcommittee's investigation was marred by lack of cooperation from department employees fearful of losing their jobs. The House Judiciary Committee, meanwhile, has launched its own inquiry.

The courts have sided with INSLAW. In 1987, federal bankruptcy Judge George Francis Bason Jr. ruled that Justice "stole" its software through "trickery, fraud and deceit," and he later ordered the department to pay the firm $6.8 million in damages plus $1 million in attorneys' fees.

And what happened to Bason? Three months after his ruling, he was denied reappointment by the U.S. Court of Appeals for the District of Columbia Circuit. In the preceding four years, only 4 of 164 bankruptcy judges up for reappointment lost their jobs. Bason's successor was S. Martin Teel Jr., the government lawyer who represented Justice in the INSLAW bankruptcy case.

Last Nov. 22, Bason received a measure of revenge. After the Justice Department appealed his ruling, Judge William B. Bryant of the U.S. District Court for the District of Columbia upheld it. Bryant said that harassment of INSLAW involved the "higher echelons" at Justice. The department is appealing the District Court ruling.

An investigation by the Justice Department's Public Integrity Section ended last July after investigators said that they had found no evidence of criminal wrongdoing. Earlier, the department also denied a request to seek the appointment of a special prosecutor. INSLAW says that the department, in its internal probe, talked to only 1 of 30 witnesses who had been interviewed by the company.

Certainly, the department's conclusion—that there is no case—raises questions about potential conflicts of interest: Justice, if it pursued a criminal probe, could undercut its own position in the civil case.

On Dec. 26, the Hamiltons asked the District Court to compel Thornburgh's department to conduct an adequate criminal investigation. Greed, pure and simple, was at the core of the dispute, they say. Their filing alleges that friends of Meese had hoped to drive INSLAW out of business and into liquidation so that its software could be bought cheaply. Then, the Hamiltons charge, companies in which a Meese friend, Dr. Earl Brian—who worked briefly in the Reagan White House—had invested could win a $200 million computer contract, Project Eagle, to automate all of Justice's litigating divisions.

According to the Hamiltons' motion, various companies in which Brian was a behind-the-scenes investor had tried to buy out INSLAW. The motion says that Ursula Meese, the wife of Edwin Meese, had bought stock in a company controlled by Brian. Ursula Meese had borrowed the money from a Meese aide, who in turn got a $100,000 loan from Brian to help purchase a house in the Washington area, the motion says. These transactions set in motion the criminal conspiracy to ruin INSLAW, the company charges.

What the Hamiltons want is clear. "The evidence assembled by INSLAW cries out for a comprehensive, thorough and hard-hitting investigation" by the Justice Department, the Dec. 26 complaint says. Only such an investigation—by Justice, or perhaps by the House Judiciary Committee—is likely to resolve this sordid tale. □

NO. 9

# FEDERAL COMPUTER WEEK

THE NEWS WEEKLY FOR THE GOVERNMENT SYSTEMS COMMUNITY

PRINT/IB-45

## LETTERS

### Rewriting History

The Feb. 19 issue of *Federal Computer Week* contains a letter to the editor about the Inslaw case from a Thomas G. Dooley of Washington, D.C. Dooley asserts that Inslaw, aided by the press, has maligned "a group of dedicated public servants" in the Department of Justice whose only fault was a conscientious effort to minimize "waste, abuse and perhaps fraud" in government contracting.

Dooley criticizes the press for failing to report these facts, even though the Justice Department has outlined the facts in its pleadings in the Inslaw case.

He curiously fails to acknowledge that two federal courts have reviewed the Justice Department's pleadings and, more importantly, the documentary and testimonial evidence and categorically rejected this Justice Department view.

In fact, both federal courts found that Dooley's "dedicated public servants" engaged in "trickery, fraud and deceit" against Inslaw; "took, converted, stole" Inslaw's proprietary case management software; and attempted "unlawfully and without justification" to force Inslaw out of business.

By neglecting to mention that the federal courts have already ruled on the question of which party to the Inslaw contract was engaged in waste, fraud and abuse, Dooley continues the tradition of the Department of Justice itself, which views itself in the Inslaw case as clearly above the law.

Dooley and the Justice Department's view of reality is reminiscent of the world view that prevailed in East Germany and Romania prior to *glasnost*. There, as here, long-term abuse of power rendered those exercising the power incapable of making prudent decisions.

Instead of trying to rewrite history through the pages of *Federal Computer Week*, Dooley should raise his voice in demanding an independent, fair and thorough criminal investigation of the "dedicated public servants" whom two federal judges have found engaged in deliberate fraud.

**William A. Hamilton**
President
Inslaw Inc.
Washington, D.C.

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NEWS

# Inslaw Accuses Justice of Trying To Steal Promis

BY VANESSA JO GRIMM
GCN Staff

Inslaw Inc. president William A. Hamilton launched a new attack against the Justice Department last week, alleging a case management system procurement is a thinly veiled attempt by Justice to steal the Washington company's much-disputed Promis software.

In a protest filed with Justice's procurement services office, Inslaw alleged that the Land and Natural Resources Division's acquisition of case management software is "a conversion contract masquerading as a development effort."

Inslaw claimed Justice officials, by denying vendors the right to bid off-the-shelf products, rigged the request for proposals to restrict competition and keep Inslaw out.

Further, by requiring the contractor to supply a system with the capabilities of Promis, the protest said Justice simply was finding a way to obtain ownership of Promis by converting existing Promis software that the department is using.

The Land and Natural Resources Division issued an RFP in January calling for a vendor to develop and install software that would integrate several existing automated and manual case management functions. Justice officials said the division has been using an old version of Promis that it legitimately licenses, but that can no longer support the division's needs.

"In this case, Justice's minimum needs are not development and ownership of case management software," the protest said. "Rather, Justice simply needs case management software to perform the functions indicated in the solicitation — functions Inslaw's product can fully perform."

The department declined comment because of continuing litigation involving Promis. Justice spokesman Michael Robinson confirmed the protest was filed and said the department took no immediate action. The protest asks Justice to scrap the current acquisition and rewrite the RFP.

## Wrangling Over Rights

Inslaw and Justice have been wrangling since 1983 over Justice's rights to Promis, a case management software Inslaw developed and installed in a number of Justice offices. Inslaw has accused the department of stealing some versions of the software and trying to force the company into bankruptcy. The dispute remains unresolved in appellate court, but two earlier decisions sided with Inslaw.

In this latest action, Inslaw accused the department of falsely identifying existing versions of Promis in use and telling interested vendors the department owns the source code for all its systems.

Inslaw claimed it has sole rights to all Promis versions operating at Justice now and that the department cannot provide this source code. The protest said department officials told Inslaw the RFP involved only a 1979 version of Promis. Inslaw disputed that this is the Promis version the Land and Natural Resources Division uses.

The procurement is "an outgrowth of a continuing bias against Inslaw which has been fueled by a lack of regard for Inslaw's legitimate proprietary rights in case management software now installed in the Department of Justice," the protest said.

ST. LOUIS POST-DISPATCH

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PR/IW/IB-47

# 'Fraud And Deceit'

## Couple Accuse Justice Department Of Cheating Them

By Phil Linsalata
Of the Post-Dispatch Staff

THE FIRST HALF of William and Nancy Hamilton's story is a study in a small company's reward for hard work: a $10 million contract to write computer software to track the thousands of criminals and cases handled by the U.S. Department of Justice.

But the Hamiltons narrate a second half in which they fall victim to what one judge called "trickery, fraud and deceit."

In fact, the abuse — in the form of unpaid service fees, stolen software and hostile takeover threats — is alleged to have come from the Justice Department itself.

These were among the conclusions of a federal bankruptcy judge who awarded more than $6 million in damages to the Hamiltons' company, INSLAW Inc.

The ruling, upheld in U.S. District Court in Washington, came from Judge George Bason Jr., who was not reappointed after handing down his decision in 1987.

Even though the district court upheld the ruling, the Justice Department is fighting the case anew in the District of Columbia Circuit Court of Appeals. The Hamiltons cannot collect the $6 million until the appeals are exhausted.

The Hamiltons are natives of St. Louis and now live in a suburb of Washington. Their company has reorganized after filing for bankruptcy in 1985. The bankruptcy was caused, they couple say, by the Justice Department's refusal to pay $1.8 million the Hamiltons say they were owed under the contract; the department had received test copies of the software.

**INSLAW owes about** $4 million in legal fees and cannot collect the court-awarded money because the Justice Department continues to appeal the suit.

The company continues to provide software for law enforcement agencies nationwide, including the the Los Angeles County prosecutor's office and the office of the St. Louis circuit attorney.

"So what that means," said William Hamilton, "is that the 42 largest United States attorney's offices, including St. Louis and Kansas City, are running on hot intellectual property."

Bason, the bankruptcy judge, ruled that the Justice Department:

- Stole the software, called PROMIS, through trickery, fraud and deceit.
- Secretly and unlawfully tried to force the company to liquidate, despite the court protection afforded in bankruptcy.
- Made decisions based on bias, not fairness.
- Refused to investigate allegations of wrongdoing within the department.

Instead of waiting for the case to work through the courts, the Hamiltons are pushing their case. While visiting Nancy Hamilton's brother, Daniel J. Burke of Glendale, the husband-and-wife team spent Sunday morning reviewing strategy.

They are lobbying on Capitol Hill, spurring investigators for the House Judiciary Committee who are examining the matter. They tell their story to reporters. And they have hired former Attorney General Elliot Richardson, a Republican, to mount a new courtroom battle aimed at forcing Attorney General Dick Thornburgh to conduct an impartial internal investigation.

**Richardson's petition,** called a writ of mandamus, alleges a conspiracy described by an unidentified informer in the writ as "a lot dirtier for the Department of Justice than Watergate had been, both in its breadth and its depth."

Among other things, the Hamiltons' writ alleges that:

- The Justice Department has refused to recognize contracts giving INSLAW ownership of the software.
- The Hamiltons got a buyout offer from a company indirectly controlled by Earl Brian, who had served on a task force reporting to then-Attorney General Edwin Meese. Brian also had been a member of Ronald Reagan's cabinet when Reagan was the governor of California.

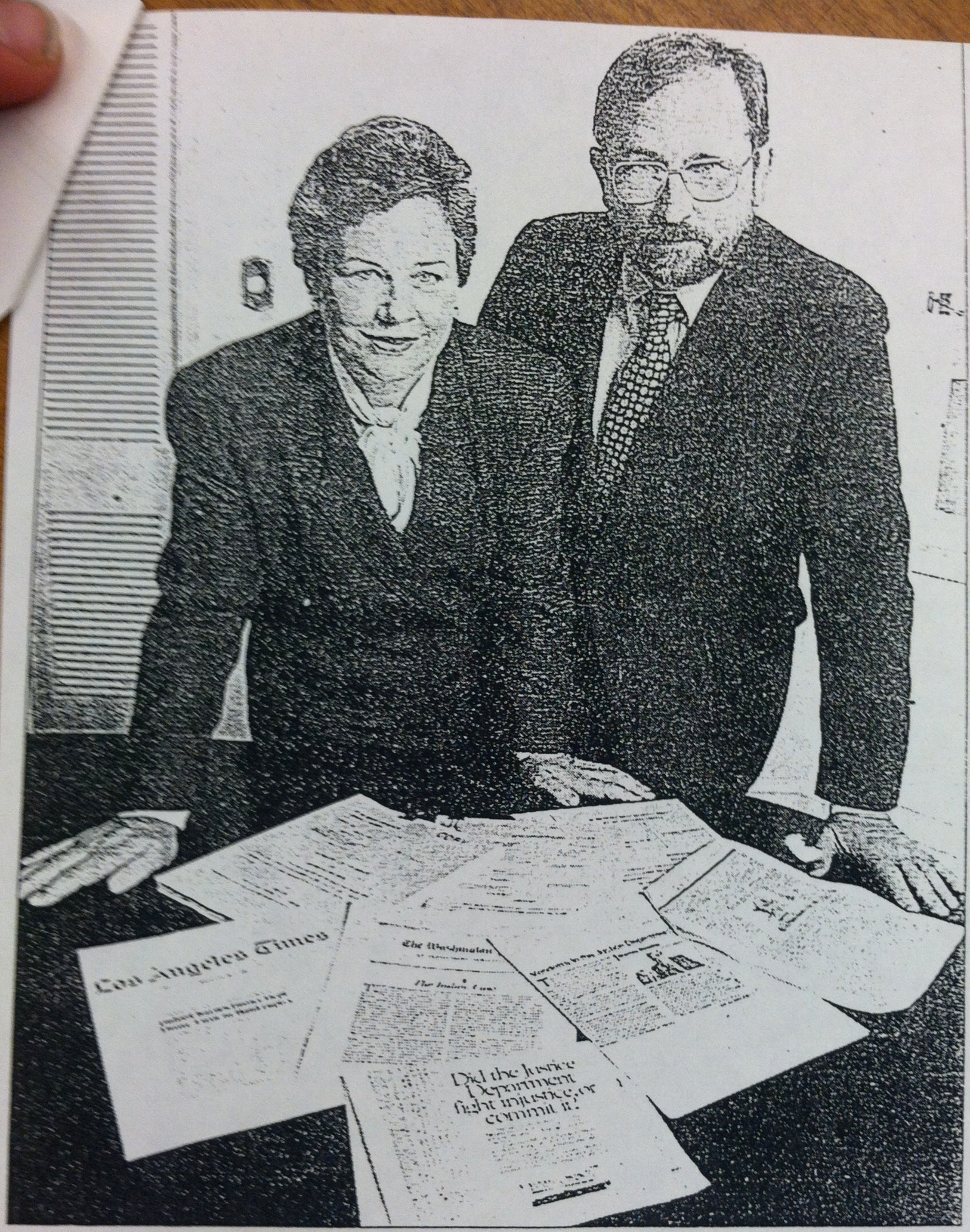
Hamilton said that when he refused the offer, an officer of the company had responded, "We have ways of making you sell." Company officers have denied this.

- Meese's wife, Ursula Meese, bought stock in two of Brian's companies. In one instance, she used money borrowed from Edwin Thomas. Thomas got a job from Meese and a $100,000 home loan from Brian.
- A second buyout offer came from a New York-based venture capital firm. That offer followed a meeting between the New York firm's leader and a businessman who claimed to have access to the highest levels of Reagan's administration.
- A ranking official in the Justice Department, Thomas Stanton, tried to push the Hamiltons to sell off their company rather than rebuild under the protection of the bankruptcy laws.

The Hamiltons make these additional allegations:

- A ranking Justice Department official met with a senior partner in the law firm that employed the Hamiltons' lawyer, Leigh Ratiner. Within a week of the meeting, the firm fired the Hamiltons' lawyer.
- Former Justice Department official D. Lowell Jensen, now a federal judge, fought the Hamiltons and blocked payments to them. In the 1960s, Jensen served with Meese in the Alameda County, Calif., prosecutor's office; the Hamiltons believe that Jensen backed a software company in California that was competing with the Hamiltons'. Jensen has denied any impropriety.
- E. Robert Wallach, the associate of Meese who was convicted of getting illegal payments from the Wedtech Corp., told the Hamiltons' lawyer that Jensen would continue to fight the Hamiltons even after becoming a judge.

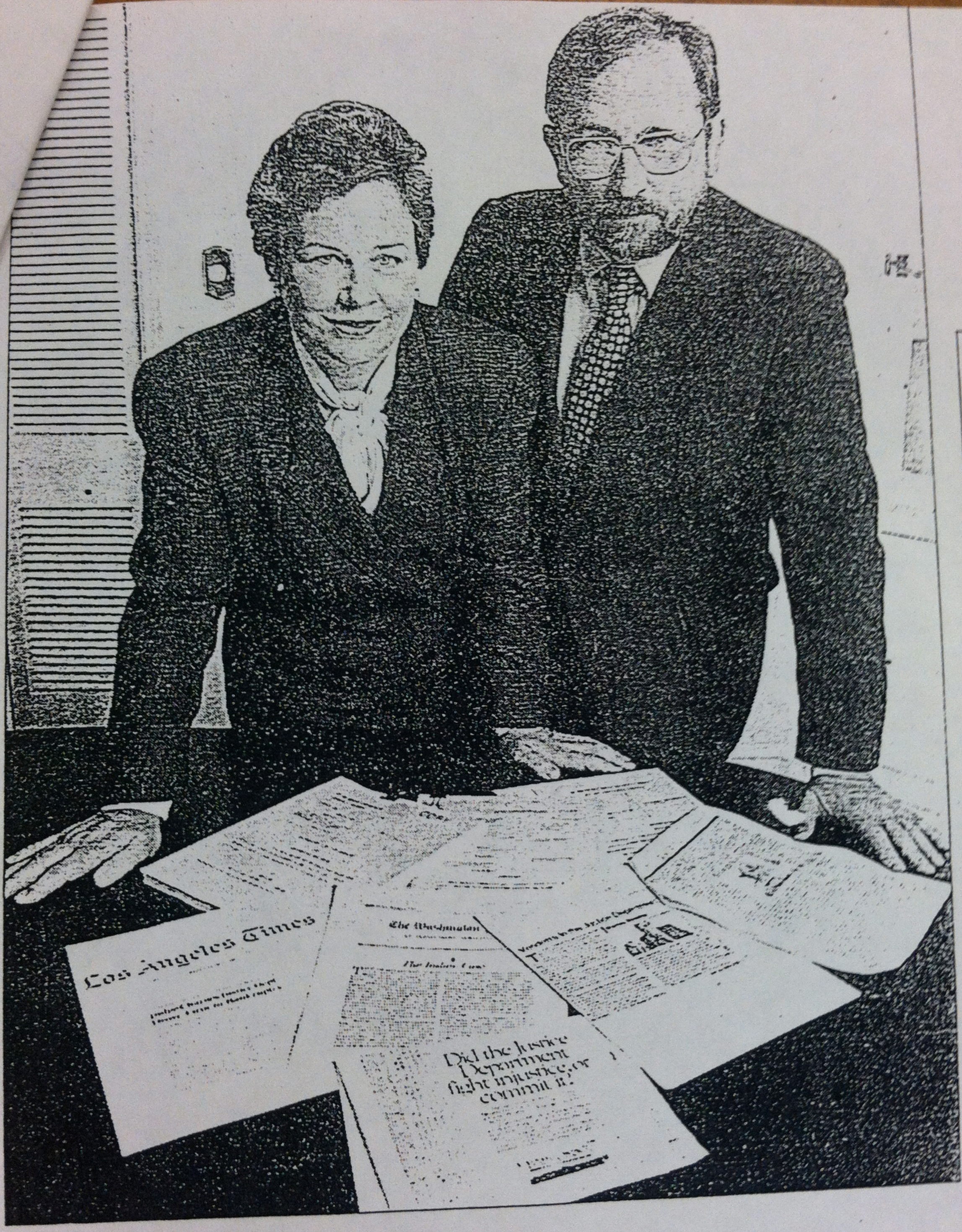
# Disputed Computer Program Was Widely Used




Jerry Naunheim Jr./Post-Dispatch

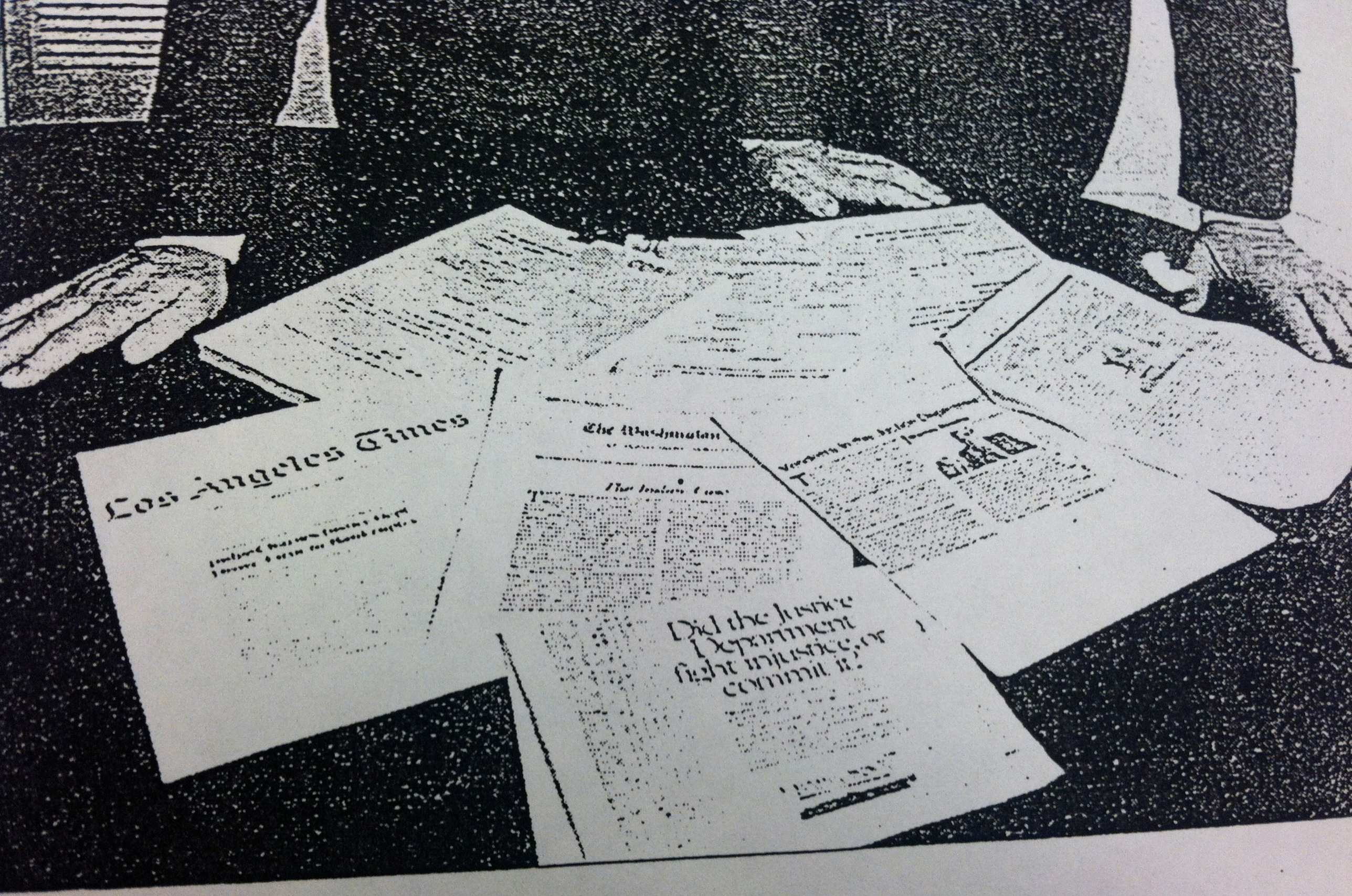
Nancy and William Hamilton with the legal documents and newspaper articles about their case against the U.S. Justice Department. The couple won a $6 million judgment.

**In the writ,** Richardson writes that "attempts to acquire control of PROMIS were linked by a conspiracy




Jerry Naunheim Jr./Post-Dispatch

**Nancy and William Hamilton with the legal documents and newspaper articles about their case against the U.S. Justice Department. The couple won a $6 million judgment.**




Jerry Naunheim Jr./Post-Dis

**...case against the U.S. Justice Department...**




Jerry Naunheim Jr./Post-Dispatch

ancy and William Hamilton with the legal doc- case against the U.S. Justice Department. The nents and newspaper articles about their couple won a $6 million judgment.

**In the writ,** Richardson writes that "attempts to acquire control of PROMIS were linked by a conspiracy among friends of [former] Attorney General Meese to take advantage of their relationship with him for the purpose of obtaining a lucrative contract for the automation of the Department's litigating divisions."

The Hamiltons filed their writ in December. The Justice Department has moved for dismissal, claiming that the court lacks jurisdiction to intervene.

The Hamiltons say that the most they stand to gain from the writ is that the truth will surface.

Nancy Hamilton said that would be enough to satisfy her.

"The idea that this can happen in this country is just infuriating," she said. "It simply should not be — and we're not about to let them get by with it."

# Disputed Computer Program Widely Used

COMPUTER SOFTWARE developed by William and Nancy Hamilton is in use by prosecutors across the country, the couple say.

The version that the Hamiltons accuse the Justice Department of stealing is used by the 42 largest federal prosecutor's offices.

The software is designed to track defendants and their cases from beginning to end. At each step in a defendant's journey, from arrest to jail or acquittal, the system links the different bureaucracies through which a defendant must pass. It also tracks hearing schedules, witnesses, attorneys and other logistics. Finally, it is designed to let prosecutors study large volumes of cases to spot and cure law enforcement weaknesses, the Hamiltons say.

Writing software — the instructions for computer programs — is difficult and time consuming. Despite copyright protections, it is easy to steal. Duplicating a program isn't much more complicated than making one video recording from another.

So after an official in the Justice Department got a test copy of the software, and trouble developed between the Hamiltons and the department, it was no problem for copies to be distributed for widespread use.

"Basically," Hamilton contends, "our software just runs everything in the Justice Department — that's all."

**— Phil Linsalata**

Washington
BUSINESS JOURNAL

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WEEK OF MARCH 5, 19

PR\IN\IB-48

# Justice Dept. seeks dismissal of Inslaw bid for investigation

## *Software firm's suit aimed at forcing internal probe*

By HUNTLEY PATON

The U.S. Department of Justice last week took formal steps to avoid launching an internal investigation into allegations that former top Justice officials conspired to drive a local company out of business in order to steal the firm's proprietary software product.

Justice asked a federal judge in Washington to dismiss a petition seeking to compel the probe, filed by District-based computer software firm Inslaw Inc., which was forced into bankruptcy in 1985 after Justice withheld payments on a $10 million contract for the software.

The bankruptcy court ruled in 1986 that Justice tried to steal the software and force Inslaw into liquidation. Last November, that decision was upheld on appeal in U.S. District Court in Washington and Inslaw was awarded $6.1 million in damages.

(Justice is appealing that decision as well, however, and Inslaw has not received any payment for damages.)

Shortly after winning that latest decision, Inslaw filed a new petition asking that the court force Attorney General Richard Thornburgh to investigate a host of allegations that never were clarified or dealt with in previous decisions.

Inslaw claims the Justice conspiracy involved several Inslaw competitors controlled by or working with Dr. Earl Brian, a prominent business executive, one-time White House employee and close friend of former Attorney General Edwin Meese. The company wants the court to order the investigation because, it says, Justice has refused to do so in good faith on its own.

Last week, however, Justice attorneys argued that private citizens and companies do not have the authority to compel public agencies to launch investigations. Justice also argued that Inslaw's request for an investigation was improper because it presented no request for relief — that is, an investigation would not give the company relief because it is only a means to an end.

The motion also noted that Inslaw's allegations will be addressed during Justice's appeal of last November's district court decision.

The 42-page document did not respond to any Inslaw allegations.

If the motion to dismiss is successful, it could be a blow to Inslaw, which has struggled to collect money from the government even though two separate court rulings found Justice culpable. Late last month, a government contract appeals panel declined to hear an Inslaw petition seeking payment of about $2 million in contract fees that Justice continues to withhold.

Justice Department noted that it already has investigated Inslaw's claims, as did a U.S. Senate panel. Both investigations found no evidence of wrongdoing.

Justice attorneys argued that private citizens and companies do not have the authority to compel public agencies to launch investigations.

The Senate investigation, led by Sen. Sam Nunn of Georgia, concluded its investigation last fall after publicly criticizing the Justice Department for refusing to cooperate with the probe. Nunn also reported that numerous Justice employees were uncooperative because they feared they would lose their jobs if they talked.

When Justice itself investigated the Inslaw matter, virtually all of the allegations, tips and names of witnesses were supplied by Inslaw itself, which had hired its own investigators. Inslaw claims Justice officials interviewed only one of the more than 30 informants whose names Inslaw had supplied to Justice investigators.

Earl Brian, who through a spokeswoman has repeatedly denied the accusations of his involvement in the Inslaw matter, is the chief executive officer of a New York-based firm with major stakes in several high technology companies. His firm also controls United Press International.

The Washington Post

AN INDEPENDENT NEWSPAPER

PR|IN|IB-49

# *Justice and the INSLAW Case*

INSLAW IS A small computer software company in this city that has been engaged in a long drawn-out battle with the Justice Department on a contract matter. The company developed software that was intended to be used in all 94 U.S. attorney's offices across the country for the purpose of enabling the department to computerize information on cases and defendants. A contract for this work was signed in March of 1982, but disputes arose almost immediately, and the agreement was terminated by the Justice Department in February of 1984. A year later, the company was compelled to file for reorganization in the U.S. Bankruptcy Court.

The company has lodged a number of serious charges against department officials that boil down to an allegation that they conspired to drive INSLAW out of business in order to award the lucrative contract to insiders, including friends of former attorney general Edwin Meese. Both the bankruptcy court and the U.S. District Court have found evidence of bias and serious misconduct by government lawyers, and have ruled that INSLAW is entitled to $8 million in damages and attorneys' fees.

These rulings—now on appeal to the U.S. Court of Appeals—concern the civil aspects of the case, but no criminal charges have been brought relating to any of the findings made by the courts. Investigations have been conducted by the Office of Professional Responsibility in the Justice Department and by the staff of the Senate permanent subcommittee on investigations. But INSLAW's owners believe a far more comprehensive inquiry by an unbiased source is needed. They have filed suit in federal court seeking to compel the Justice Department to launch a full-scale investigation, interview 29 witnesses they have produced who have so far been ignored and put the entire probe in the hands of someone who has never been involved in the case before.

Whether or not this suit is successful, these charges cannot be ignored. The House Judiciary Committee has begun an investigation, and a decision has been made not to tolerate the substantial delays, lack of cooperation and heavy-handed interference that undermined the Senate inquiry. In the face of two strong court decisions and this looming threat on the Hill, it is hard to understand why Attorney General Thornburgh is not more forthcoming. He should be leading the investigation of alleged internal wrongdoing, not stonewalling it.

The INSLAW case has been festering for six years, and the Justice Department, still trying to win its civil case in yet another appellate court, continues to reject all demands for a public accounting of how its own officials handled the contract. This continued resistance lends credence to the findings of two judges and compels a wide-open and thorough investigation on the Hill.

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The Washington Times

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MONEY
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PR/IN/IB - 50

# U.S. seeks mediator in software lawsuit

By Laura M. Litvan
THE WASHINGTON TIMES

The Justice Department, locked in a closely watched court battle with a local software contractor that claims the department tried to steal its product, wants the matter solved quietly by a court-appointed mediator.

In a filing last week with the U.S. Court of Appeals for the District of Columbia, the Justice Department said it wants a neutral outsider to help end a seven-year legal struggle with Inslaw Inc. of the District.

During the past two years, two federal courts have ruled that Justice officals maliciously tried to force Inslaw into bankruptcy five years ago to steal software the firm was providing under contract. The government is appealing the most recent of these decisions.

"The department believes that a neutral, court-appointed mediator may facilitate an expeditious and fair resolution of what has been a longstanding and contentious dispute, without the need for further litigation," the Justice Department said in a statement.

But Inslaw's president, Bill Hamilton, denounced the attempt to use a mediator in the case, because he thinks evidence of improper activities by high-level Justice officials — including then-Attorney General Edwin Meese — has yet to be brought to light through the legal discovery process.

Mr. Hamilton also said he wants first to unearth information still undisclosed by the department, to aid him in pursuing damages.

"There is the continued pretense that this is simply a complicated, private contract dispute between a vendor and the government," Mr. Hamilton said. "That's not what this is. This is about a far-reaching criminal conspiracy that has reached the Justice Department from top to bottom."

A probe by the department was halted in July after department investigators

*see* **INSLAW**, *page B7*

## INSLAW

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said they found no evidence of criminal activity.

Mediation experts said the use of a neutral outsider can help to reduce the costs of bringing or appealing a case because it can cut back on costly attorney fees. They also said it can remove a case from the spotlight often associated with more public proceedings.

"You have the advantage of confidentiality," said Paul Wahrhaftig, president of the Conflict Resolution Center in Pittsburgh. "You're not very confidential when everything is on the public record in an appeals court. [Mediation] is more behind closed doors."

The dispute revolves around a $10 million software contract awarded to Inslaw in 1982. Inslaw was to provide computer programs it named "Promis" that would allow 20 U.S. attorneys' offices to keep tabs on their caseloads.

According to Mr. Hamilton, Justice officials began withholding payments to the company in early 1983, one month after the procurement officer for the contract demanded a copy of the proprietary software, claiming the company had violated the contract by not informing the government about new bank credit. When the payments stopped, the procurement officer said a portion of the contract was too costly.

In January 1988, a U.S. bankruptcy court judge found that the government had "in bad faith, vexatiously, in wanton disregard of the law and facts, and for oppressive reasons" tried to steal the software and force the company to liquidate. Last year, U.S. District Judge William B. Bryant upheld that ruling on appeal and directed Justice to pay Inslaw $6.1 million in damages.

Late last year, Inslaw asked the U.S. District Court for the District of Columbia to order the department to investigate the allegations.

The Justice Department has asked the court to dismiss the attempt to force an internal probe, arguing, among other things, that private companies and citizens cannot compel public agencies to investigate their activities.

In a sworn affidavit, Mr. Hamilton claims that the department wanted to obtain the software to help friends of Mr. Meese, who were seeking a contract worth as much as $200 million to install the Promis software on computers in most department offices.

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THE NEWS WEEKLY FOR THE GOVERNMENT SYSTEMS COMMUNITY

PR/IN/IC-01

BUSINESS

NSC FILES PROTEST SAYING TISOFT RENEGED ON CONTRACT PROMISES

# Project Eagle Contractor Under Attack From Jilted Sub

By LEIGH RIVENBARK

Tisoft Inc., the small Fairfax, Va., systems integrator that won the Justice Department's Project Eagle office automation contract, is under fire from a company that said it helped win the award and then was abandoned by Tisoft once Eagle was in hand.

Last Friday a federal court in Alexandria, Va., was scheduled to hear arguments in Network Systems Corp.'s suit against Tisoft. NSC wants $6.4 million from Tisoft because, NSC alleged, Tisoft reneged on the companies' teaming agreement.

Tisoft contended that the teaming deal was no more than "an agreement to agree" at a future date and was not a binding promise to retain Brooklyn Park, Minn.-based NSC as a subcontractor.

NSC fired its second salvo in the building legal fight last week as it responded to Tisoft's motion to dismiss the case. "It was not until Tisoft obtained what it wanted — the Project Eagle contract — that it announced that it would not honor its contractual obligations to NSC," the company said in a March 26 filing at the U.S. District Court for the Eastern District of Virginia.

"While Tisoft was happy to rely on NSC's assistance and to highlight NSC's equipment and reputation in its proposal...once Tisoft was awarded the contract, it abandoned NSC in order to purchase Ethernet networking equipment, presumably because the latter equipment is cheaper," NSC said.

Post-award debriefings revealed that Tisoft was not the low bidder on the Eagle contract, which is worth at least $76 million, but won on technical merit, NSC said.

NSC said the crux of the technical merit was NSC's proprietary Hyperbus networking system.

Tisoft switched to an Ethernet networking approach shortly after the award.

The winning proposal stated that NSC's network interface card would be "one of the most significant components of the proposed design," NSC said.

Tisoft asked the court to dismiss the case because "the contract was not awarded to Tisoft because of NSC." The systems integrator chose to drop NSC's proprietary approach in favor of the more open and standard Ethernet, Tisoft said.

NSC responded that Tisoft already had considered and rejected Ethernet before teaming with NSC.

The two companies also differed widely on how binding they considered their teaming agreement, which covered the solicitation period from 1986 until the award in June 1989.

Tisoft said the agreement did not constitute a subcontract but only an agreement to work together on the proposal. "In short, NSC attempts to enforce nothing more than an agreement to agree on a subcontract in the future, the material terms of which are unknown," Tisoft said.

NSC said it delivered a value-added remarketer agreement to Tisoft, an agreement that NSC considered a subcontract for its work on the operational Eagle system. NSC also quoted the teaming agreement as saying that "if awarded a contract against that proposal, Tisoft agrees to order all networking requirements from NSC."

### Lost Profits

The request for $6.4 million from Tisoft is based on what NSC sees as the amount of its lost profits resulting from the alleged breach of contract.

The Justice Department so far is staying clear of the fray between the two companies, deputy assistant attorney general Steve Colgate said. The case "really doesn't involve us

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## EAGLE,

FROM PAGE 20

as it's a dispute between a contractor and a subcontractor," Colgate said.

Progress on implementing Eagle is picking up its pace, Colgate added. More than 400 Wyse Technology 286- and 386-based workstations are in place and more are being installed in the Washington, D.C., area, in offices of the Criminal Division's Public Integrity Section, the Executive Office of the U.S. Attorneys and the Tax Division.

The first field installation, in the Eastern District of Pennsylvania, is up to 176 workstations. By early summer, Justice plans to install Eagle at a rate of eight districts a month until all 94 districts are operational in 1991, Colgate said.

Eagle will use Data General Corp.'s MV-class minicomputers, which run on Data General's own operating system, but down the road Justice could migrate onto Data General's Unix-based Aviion minis, Colgate said.

"We haven't ordered any Aviion-class machines," he said. "The Department of Justice, like other federal agencies, looks to open systems, and eventually we would look at Data General Unix-based systems, but there is no rush into that now.

"We're moving in that open-systems direction, using FTS 2000 X.25 packet-switched service and TCP/IP, all that is a move toward open systems." ◄

PRIN/IC-02

Washington
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VOLUME 8, NUMBER 46 ONE DOLLAR WEEK OF APRIL

# Attorney General caves in, will assist in Inslaw probe

## *Thornburgh asserts Justice will cooperate in inquiry*

By BONAR MENNINGER

After months of intractability, Attorney General Richard Thornburgh two weeks ago yielded to growing Congressional pressure and agreed to grant investigators unlimited access to Justice Department personnel and documents relating to the controversial Inslaw affair.

Sources said Thornburgh's decision marks capitulation in a lengthy and sometimes acrimonious power struggle between the attorney general and veteran Texas Rep. Jack Brooks, chairman of the House Judiciary Committee, and may represent a turning point in the long and bitter Inslaw dispute.

A federal bankruptcy judge in 1987 ruled the Justice Department used "fraud, trickery and deceit," in an attempt to drive Inslaw Inc., a Washington-based software development firm, out of business and steal proprietary software Inslaw developed as part of a 1982, $10-million Justice Department contract. The decision was upheld on appeal last November.

In a December lawsuit, Inslaw attorneys alleged Justice's attempts to put the company out of business were part of a larger criminal conspiracy designed to deliver Inslaw's software and lucrative follow-on contracts to cronies of former Attorney General Edwin Meese.

Reportedly, a confidential Justice informant in 1988 claimed the Inslaw case was "a lot dirtier for the Department of Justice than Watergate ever was" and had compromised the agency "at every level," according to the suit.

Investigators for Brooks's Judiciary Committee began probing the matter last August but until now have been stymied by Justice officials' repeated refusals to provide unfettered access to key documents and personnel involved in the case.

"I think (Thornburgh) finally realizes that Brooks isn't going to go away and this issue isn't going to go away," one source said. "And I think he sees there is a growing political cost for him to continue to hold this thing up."

Michael Robinson, a spokesman for the Justice Department, confirmed the Brooks investigation was now proceeding with the cooperation of the Department.

"There were some details that needed to be worked out between the Department and the committee regarding some procedural issues, and those details have now been resolved to the satisfaction of both the Department and the Committee," Robinson said.

The Judiciary Committee staff refused to comment on the investigation or the possibility of hearings into the matter. One observer, however, speculates hearings may be held before the congressional recess in July.

William Hamilton, Inslaw's president, declined to comment on the latest developments.

Thornburgh's decision to cooperate with Judiciary investigators is apparently unprecedented. Justice Department observers say this marks the first time in recent memory Justice has allowed itself to be investigated by an external agency.

One source speculated Thornburgh's change in tactics may be designed to head off expected criticism about his lack of cooperation when he appears before Brooks' Judiciary Committee in May for the Justice Department's annual appropriations hearings.

In another sign the Justice Department may be softening its stance on the matter, attorneys for the department last month filed a motion in the U.S. Court of Appeals seeking the appointment of a neutral mediator to help resolve the Inslaw litigation, which is again on appeal.

Prior to Thornburgh's agreement to cooperate, Justice officials had repeatedly denied Congressional investigators access to documents relating both to the original Inslaw contract and a potentially related issue, the $76-million Project Eagle computer procurement.

The agency also had stipulated that Justice employees could be interviewed only in the presence of Justice Department attorneys. Knowledgeable sources confirmed last week that Thornburgh has verbally agreed to distribute a memo urging Justice employees cooperate with the House investigators and assuring them no retribution will follow if witnesses tell what they know about the dispute.

Fear of retribution and the restriction of documents hindered an earlier Congressional probe into the protracted dispute. The Senate Permanent Subcommittee on Investigations conducted a 17- month investigation into the case in 1987 and 1988. The subcommittee said in the end that while they could find no evidence of a criminal conspiracy, "the staff's attempt to conduct a free, full and timely investigation was hampered by the (Justice) Department's lack of cooperation."

In a strange turn of events, the subcommittee, chaired by Sen. Sam Nunn, reportedly has so far declined to turn over its files on the Inslaw case to the Brooks committee investigators now probing the matter.

A staffer for Nunn's subcommittee would not comment on the allegation.

Two internal Justice Department investigations into the Inslaw affair over the past several years — by the Office of Professional Responsibility and the Criminal Division's Public Integrity Unit — have found no evidence of any criminal activity. Inslaw's December lawsuit, which names Thornburgh as the respondent, seeks to compel another Justice probe into the matter.

The current investigation by Brook's Committee is delving into both the original Inslaw contract and the Project Eagle procurement, a hardware buy to provide office automation and case management systems for Justice's 93 U.S. Attorney's offices, its criminal and tax divisions and potentially all Justice offices around the country.

The contract, which has been estimated to be worth up to $800 million with follow-ons and is the largest Justice Department procurement ever, was awarded to Fairfax-based Tisoft Inc. last June.

Tisoft's bid of $76 million for the initial phase of the project was reportedly $28 million higher than the low bidder on the job. Justice officials have justified the higher-priced award by stating that Tisoft provided a technically superior solution. However, Tisoft recently elected to substitute different equipment for the minicomputers they had originally bid.

Even before the award to Tisoft, Inslaw attorneys questioned the legitimacy and propriety of the entire Eagle project because they believe Justice planned to use Inslaw's disputed Promis software as the centerpiece case management system to run on the Eagle network.

Justice officials have denied any connection between the Inslaw software and Eagle and have recently claimed publicly that Eagle's sole function is to provide office automation systems. However, an August 1989 private correspondence between the Justice Department and the General Service Administration confirmed that case management software would be installed on Eagle computers and that it would take three years to develop the software.

The Eagle procurement drew fire in September when the General Accounting Office reported the Justice Department awarded the contract before developing a security system or conducting a risk analysis for the massive data base, in apparent violation of the Computer Security Act of 1987. The Eagle system will hold highly sensitive information on federal civil and criminal cases, including the names of criminal witnesses.

SATURDAY, APRIL 28, 1990

The Washington Post

AN INDEPENDENT NEWSPAPER

PRINTIC-03

# *Mr. Thornburgh Cooperates*

AFTER SIX years of stonewalling, the Justice Department has finally taken a conciliatory step toward getting to the bottom of a nasty contract dispute. The case involves INSLAW, a local computer software company that developed material to be used in keeping track of cases in all the U.S. attorneys' offices around the country. INSLAW alleges that in the early '80s, Justice Department officials—including some close associates of former attorney general Edwin Meese—terminated INSLAW's multi-million-dollar contract and conspired to drive the company out of business in order to award the contract to insiders. The government has consistently denied these charges but has yet to win a victory in court.

So far two federal courts have found evidence of bias and serious misconduct by government lawyers in connection with the INSLAW contract, and the company has been awarded $8 million in damages and attorneys' fees. This civil case is on appeal. INSLAW is also trying, in court, to force a criminal prosecution, but that is very difficult to do. A better course would be to have the potentially criminal aspects of the case investigated by a neutral body that has not been involved in the drawn-out dispute. The Justice Department has conducted two internal investigations and, in spite of court findings of impropriety, has found no grounds for prosecution. The Senate permanent subcommittee on investigations undertook a probe in 1987, but the staff report that was produced criticized the department for lack of cooperation. The report specifically faulted the department's insistence that Justice lawyers represent any employee who was called to testify. In practical terms, this meant these witnesses were always interviewed in the presence of attorneys whose primary client was the department.

Last August the House Judiciary Committee began a new investigation determined not to agree to the conditions imposed on the Senate subcommittee. After months of negotiations, Attorney General Dick Thornburgh has now assured Judiciary Committee chairman Jack Brooks (D-Tex.) that his inquiry will have the full cooperation of the department. Committee investigators will have direct access to department personnel and documents, and employees will be assured that they can testify without fear of retribution. This is not only the right decision, it is a sensible one in the department's own interest. Doubts about the objectivity of the department's investigations, and questions about the failure to prosecute anyone in this matter, would have been bound to linger if the department had continued to obstruct an outside investigation. There may be no grounds for criminal prosecution in this case, but no matter what the outcome, cooperating in the House committee investigation is the best way for the attorney general to protect the integrity of the department.

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PRIJWIIC-04

# New Inslaw suit says Justice plans to copy software

## *Firm says new bid geared to its Promis source code*

By BONAR MENNINGER

Inslaw Inc., the Washington-based software firm entangled in a bitter legal dispute with the Department of Justice, attacked anew last week with a protest alleging a pending Justice Department software buy is in fact a surreptitious effort aimed at converting software owned and developed by Inslaw.

Inslaw's April 23 agency protest claims a request-for-proposal (RFP) issued Jan. 30 by the Justice Department's Land and Natural Resources Division is a "conversion contract masquerading as a development effort" and a blueprint for copying to a new format the source code of Promis, the Inslaw-developed software at the core of the company's long-running dispute with the Department.

The company developed Promis as part of a $10-million, 1982 contract with the Department. Inslaw's protest alleges the impending Justice "conversion" represents a violation of a January 1988 permanent injunction issued by the U.S. Bankruptcy Court prohibiting the Justice Department from expanding the use of Promis or converting Promis for operation on other platforms.

The order stemmed from a court ruling which found the Department fraudulently attempted to put Inslaw out of business and steal the rights to Promis.

Carol Rothgeb, Justice Department contracting officer for the procurement, declined to comment. A Department spokesman, Michael Robinson, said the agency had not yet fully reviewed the protest but would have no comment in any case since the entire Inslaw affair remains in litigation.

In backing up its allegations of a planned Promis conversion, Inslaw's protest asserts the functional and design requirements in the Land and Natural Resources RFP "precisely match the capabilities of Promis" and notes the RFP calls for the winning vendor to have at least "five years experience with Promis."

At the same time the procurement's language excludes Inslaw from bidding responsive off-the-shelf software and, the protest alleges, appears designed to "wire" delivery of the contract to Arlington-based Software Development and Services Corp., a company headed by a former Inslaw executive. The executive, William Garbee, left Inslaw in 1985 and is the only individual outside Inslaw who possesses the expertise to copy the Promis code, according to the protest.

Garbee was out of town last week and unavailable for comment. Gilbert P. Muir, vice president of Software Development and Services, said Inslaw's allegations were unfounded. Muir acknowledged Software Development planned to bid the Justice procurement in question, but said two other companies also planned to bid the job.

"I don't think those other firms would waste their money bidding the contract if they thought it was wired to us," Muir said.

The procurement calls for the development of a litigation case management system for use in "case tracking, attorney and paralegal timekeeping, debt and expert witness tracking, files management" and similar functions. The RFP further stipulates the government will own the proprietary rights to the software once the project is completed.

A perennial critic of the government's computer procurement policies and an Inslaw ally last week said the lack of adequate technical information in the RFP as well as the requirement that the work be completed in one year and at a fixed price raised questions about the Department's intentions in conducting the development procurement.

"It's unheard of to have a fixed-price, fixed-duration software development contract," said Terry Miller, president of Great Falls-based Government Sales Consultants Inc. "That's just not the way software is developed. It takes a lot of money and a lot of time and is generally done on a cost-plus basis."

Miller added: "It's going to be real interesting to see how Justice reacts (to the protest.)"

Charges raised by Inslaw of a criminal conspiracy involving the Department of Justice's attempts to put the company out of business are currently the subject of an Inslaw lawsuit as well as an investigation by the House Judiciary Committee, chaired by Rep. Jack Brooks.

# Opinion

## NEWS-PRESS

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PRIN/IC-05

# U.S. attorney general is abusing government's power



JAMES J. KILPATRICK

Nothing in public life is uglier than the abuse of power. Here in the capital, no recent abuse of power is much uglier than the abuse of power that continues in the lingering Inslaw case. You ought to know about it.

Briefly summarized, the case involves an effort by the Justice Department to steal the software of a young inventor, to drive his small corporation into bankruptcy, to rig bids on $200 million in software contracts, and to stonewall a Senate subcommittee that futilely attempted to look into the affair.

Early in January I wrote of the Inslaw case that it was beginning to smell to high heaven. I asked what Attorney General Dick Thornburgh proposed to do about it. Four months have passed. The stench grows worse. And Thornburgh proposes to do nothing about it.

The attorney general is using every recourse at his command to prevent an independent investigation of the Inslaw case. One searches for a word to describe the conduct of the Department of Justice. "Unjust" comes to mind, but "unconscionable" is closer to the mark.

Let me go back. The case involves William Hamilton, a brilliant computer programmer who is president of his small firm, Inslaw Inc. In 1973 he began development of software that would enable government prosecutors to keep accurate track of their caseloads. He called the system PROMIS (Prosecutor's Management Information System). With progressive improvements it worked so well that in 1982 Hamilton won a three-year contract to install the system in 20 of the most active U.S. attorneys' offices. He fulfilled the contract. By withholding payments, the Justice Department pushed him into bankruptcy.

How could this have happened? Hamilton charged conspiracy. The PROMIS contract had fallen into the hands of a deputy attorney general, C. Madison Brewer. Several years earlier, Hamilton had fired him from Inslaw. Hamilton alleged that Brewer had enlisted other officials in a vindictive scheme to discredit the software and to capture his invention. The charges smacked of paranoia.

Bankruptcy Judge George F. Bason Jr. spent months in hearing evidence. In September 1987, he sustained Hamilton down the line. Bason found there had indeed been a plot to achieve the inventor's "ruination." The payments had been withheld "in bad faith, vexatiously, and in wanton disregard of the law and the facts." The department "took, converted, stole" the enhanced PROMIS system "by trickery, fraud and deceit." Brewer was motivated "by an intense desire for revenge." The testimony of department witnesses was "totally unbelievable." Bason awarded Hamilton $6.8 million in damages, plus another million in legal fees.

It was a stunning decision — so stunning that Sen. Sam Nunn assigned his permanent subcommittee on investigations to have a look. The subcommittee staff found no proof of a conspiracy, chiefly because the Justice Department made it impossible for the staff to do its work. Nunn was stonewalled all the way by "the department's intransigency."

A department spokesman confidently predicted before Nunn's subcommittee that Bason's decision would be overturned on appeal. He was dead wrong. In November 1989, U.S. District Judge William B. Bryant affirmed the bankruptcy court on every major finding. Inslaw performed its contract, said Judge Bryant, "in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had day-to-day responsibility for supervising its work." There was "convincing, perhaps compelling support" for Bason's findings. Bryant refused to disturb them.

Whereupon Thornburgh announced that the government would take a further appeal, the better to exhaust Hamilton's resources. Hamilton responded by suing for a writ of mandamus to compel the attorney general to appoint independent special counsel to investigate. Such an appointment could lead to criminal charges. Thornburgh last month demanded that the suit be dismissed. He claims an absolute, unreviewable power of "prosecutorial discretion." He will not set an impartial investigation in motion.

Meanwhile the department has advertised for bids on a case-management system for its division of Land and Natural Resources. The contract requirements have been so skillfully drawn that Inslaw is effectively barred from even trying for the contract.

There the ugly matter stands. Attorney General Thornburgh has at his command the power of the government's bottomless purse. He is brutally abusing that power. I for one cry shame.

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PR/IN/IC - 06

# Tisoft bags Eagle only to be netted by Inslaw

*Vienna systems integrator finds itself in thick of 'Computergate'*

By BONAR MENNINGER

A year ago, Vienna systems integrator Tisoft Inc. won its biggest contract ever, a $76 million Department of Justice office automation hardware buy known as Project Eagle.

Good news for the company, but Tisoft's president Pat Gallagher is less than ecstatic these days. The way Gallagher sees it, the hard-fought Eagle win has unfairly entangled Tisoft in one of the ugliest procurement controversies ever — the Inslaw affair.

"I am completely convinced that when the dust clears and the investigations are finished, there will be absolutely no evidence of a connection between Project Eagle and the Inslaw matter," Gallagher said last week. "It's just getting there that's painful."

Over the past three years, a fight to the finish between Washington software house Inslaw Inc. and the Justice Department has come to dominate center stage among the many agency-vendor disputes ongoing in the Washington computer community.

Two federal judges have ruled the Justice Department fraudulently attempted to drive Inslaw out of business and steal its

See TISOFT, page 30

TISOFT continued from Page 1

proprietary software, a system called Promis designed in 1982 as an interactive data base for the management of legal cases at U.S. Attorneys' offices around the country.

Inslaw's president, Bill Hamilton, has asserted the attempt to destroy Inslaw was part of a larger criminal scheme aimed at delivering Promis and future associated contracts to cronies of former Attorney General Edwin Meese.

Even before Tisoft won the Eagle contract, Inslaw attorneys claimed pirated copies of Promis were intended as the centerpiece software for the Eagle equipment, but when efforts to misappropriate Promis failed, the Justice Department found itself with an impending major computer buy but no case management software to run on it.

Vague suggestions that Tisoft was itself somehow involved in the alleged criminal conspiracy surfaced after award to the firm last June. The suppositions grew in part from the fact that Tisoft was high bidder — $28 million over the low bid for the project — and in part because of Tisoft's creation of two tiers of stock in January 1986. The later fact appeared to indicate the company was to be sold to an unidentified party or parties.

The change in Tisoft's capital structure coincided with the award to Tisoft of an earlier Justice office automation contract that Justice has said served as a model for the Eagle procurement.

Gallagher acknowledged Tisoft is on the block, but he says the idea that the changes in the firm's stock configuration in some way revealed the company planned to cash out to friends of the former Attorney General is absurd.

According to Gallagher, the two tiers of stock were created solely to facilitate im-

# Tisoft finds itself in middle of Inslaw affair

plementation of an employee stock option plan. A subsequent modification to the company's bylaws two months before Project Eagle was awarded — the amendment cited unspecified "extraordinary" delays in the disbursement of the new class of stock — resulted from the fact that the company's executives had chosen not to exercise their options, Gallagher said.

Gallagher said he is seeking to sell because all his equity is tied up in the company and "I'm 52 years old and I want some liquidity."

On the issue of the top-dollar award to Tisoft, Gallagher said the evaluation of the Eagle bid was weighed 60 percent toward technical and managerial considerations and 40 percent toward cost. As a result, he said, Tisoft made a decision early on to go after all desirable technical features and in so doing accumulate evaluation points in the firm's favor. The top-shelf strategy was successful, he said.

"We didn't want to go in and low ball the thing," he said. "Our plan from the start was to go after the desirable features as opposed to the minimum mandatory requirements."

Gallagher said a post-award change in the hardware central to Tisoft's bid — a change that triggered a lawsuit by the jilted supplier — was driven by a stipulation in the Eagle contract that mandated the winning vendor provide technological upgrade options after award.

Gallagher went on to say that nowhere in the Eagle RFP did the Department stipulate or note that case management software would run on the equipment. That claim is hotly disputed by Inslaw's Hamilton, who cites a number of points in the RFP he says clearly indicate the computers will be used for case management software.

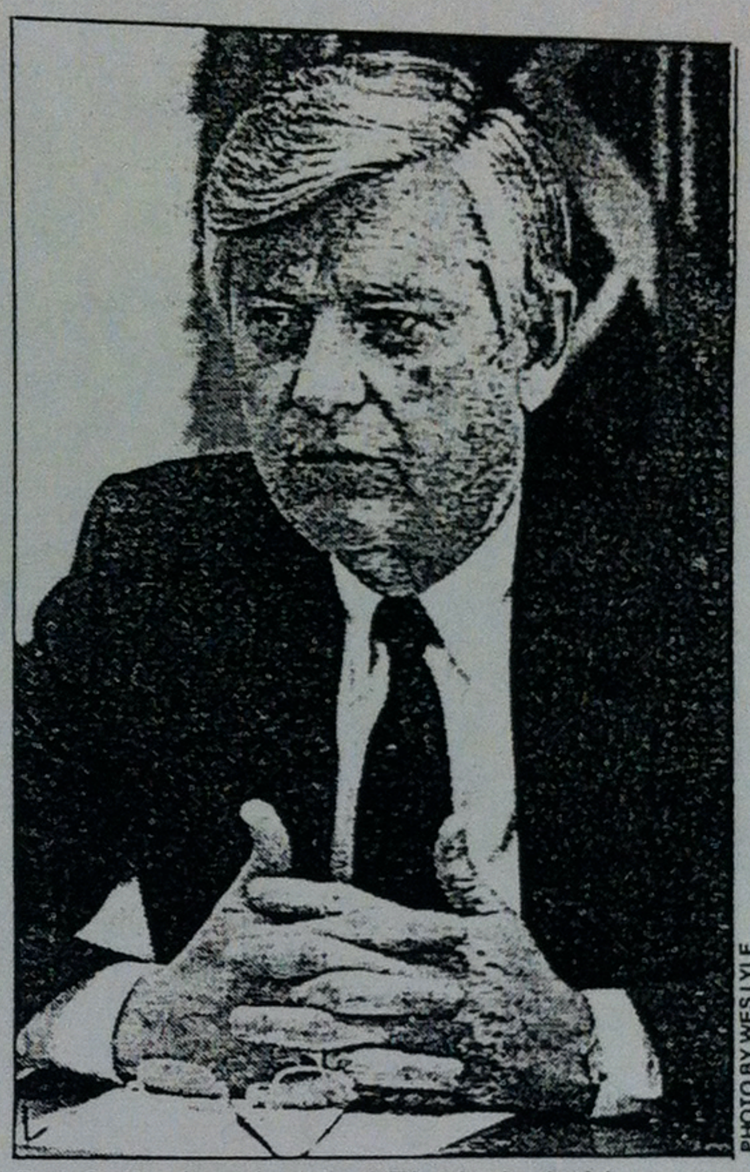


PHOTO BY WES LYLE

**Pat Gallagher, head of Tisoft, feels his company has been unfairly tarred in the Inslaw probe.**

Hamilton's assertion about the government's plan is supported by a letter from the Department of Justice to the General Services Administration in August 1989 that stated a case management system will be developed and installed on the by-then-already acquired Eagle hardware within three years.

In the meantime, Justice is seeking $4 million to buy new Prime computers in order to continue operating the Promis software in the 42 largest U.S. Attorneys' offices.

According to Hamilton, the Prime buy is redundant when considered alongside the massive Eagle acquisition and reflects the depth of the government's case tracking software dilemma.

For all that, Michael Robinson, a spokesman for the department, last week said Project Eagle was not and is not designed to run any case management software. When asked about the Justice-to-GSA letter to the contrary, Robinson said, "I don't know. I can't explain that."

Regardless of what Justice plans to do with the machines, Gallagher said it is not a concern of Tisoft's.

"What the government does with the machines is up to them," he said.

Resolution of the questions surrounding the government's motives and intentions regarding Eagle will probably not be resolved until an investigation into the entire Inslaw matter now being conducted by the House Judiciary Committee is complete.

Said Gallagher: 'I'm not saying that Inslaw was or was not badly treated. My only point is that Tisoft and the Eagle contract are not involved. We've got 100 hearty souls working diligently on this, and if forces beyond our control harm this contract, then it is a matter of great concern to us. The contract is the company."

THE WALL STREET JOURNAL.

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# Software Maker Finds Wheels of Justice Grind Slowly When Justice Department Is the Accused

By PAUL M. BARRETT
*Staff Reporter of* THE WALL STREET JOURNAL

WASHINGTON – Like a labyrinthine lawsuit out of Charles Dickens's "Bleak House," the case of *Inslaw Inc. v. U.S. Department of Justice* threatens to drag on forever, growing more opaque with age.

The story began happily enough in 1982, when William Hamilton, a computer software inventor who owns and runs Inslaw with his wife, Nancy, landed a $10 million contract to provide the Justice Department with a computer program to track court cases. The dispute over precisely what happened next has spawned a cottage industry for Washington lawyers.

In seven years of claims and counterclaims, two federal courts have affirmed the Hamiltons' basic assertion: The Justice Department under Attorney General Edwin Meese stole Inslaw's "Promis" case-management software, which almost half of the regional U.S. attorneys' offices continue to use. The Hamiltons' tiny Washington, D.C., company was awarded more than $6 million in compensatory damages, but the government hasn't paid a penny while it has appealed the case for a second time.

After years of no-holds-barred legal defense, the Justice Department has lately shown interest in quietly resolving the case. It now proposes turning the dispute over to a court-appointed mediator.

But the Hamiltons refuse to settle. They want a public airing of their allegations that a conspiracy reaching all the way to then-Attorney General Meese's office aimed to drive Inslaw out of business and make off with its software. The department, Mr. Meese and other current and former officials have denied the charges.

The Hamiltons' best hope for a complete hearing may come from the House Judiciary Committee, which has been investigating the Justice Department's computer-procurement practices. In addition to the Inslaw dispute, the committee's staff is examining alleged irregularities in the Justice Department's biggest high-tech overhaul ever. Project Eagle, as it's known, is expected to cost at least $212 million over eight years, and possibly much more.

In Judiciary Chairman Jack Brooks, the Hamiltons have a potential champion. The crusty Texas Democrat likes nothing better than a good scrap with a big bureaucracy—particularly during a Republican administration. The Inslaw mess, he contends, has already set back computer modernization at the Justice Department by "as much as 10 years."

Widely considered a technological backwater, even by government standards, the Justice Department badly needs outside supervision of its computer operations, contends Terry Miller, a Falls Church, Va., high-tech consultant. "Justice ranks among the worst" federal agencies in this regard, he asserts.

## Department of Incompatibility

Though they claim things are improving, department officials admit that most of the agency's numerous bureaus and subdivisions use incompatible equipment, resulting in lost time, money and occasionally even lawsuits. Until recently, some prosecutors "were getting whipped in court" by private lawyers armed with more sophisticated research and word-processing support, says Stephen Colgate, a senior department administrator.

> *"Inslaw performed its contract in a hostile environment that extended from the higher echelons of the Justice Department."*
>
> –U.S. DISTRICT JUDGE WILLIAM BRYANT

The department hired Inslaw in 1982 to begin to address the problem with its Promis computer software, which remains the leading commercially available legal case-management program. Almost immediately, the contract became tangled in technical disputes, prompting Justice to cease certain payments and ultimately driving Inslaw into bankruptcy court.

The Judiciary Committee is investigating whether this was an example of hamhanded federal procurement or, as the Hamiltons allege, evidence of a massive conspiracy.

The courts, without directly addressing the role of Mr. Meese or his top aides, have ruled for Inslaw. In 1987, a federal bankruptcy judge found that midlevel Justice Department officials, by means of "trickery, fraud and deceit," stole the Promis case-management software and purposely tried to force Inslaw's liquidation. Judge William Bryant last November affirmed the decision, noting enigmatically that testimony and depositions indicated "Inslaw performed its contract in a hostile environment that extended from the higher echelons of the Justice Department."

The department has exonerated itself in two internal reviews, prompting conflict-of-interest allegations from the Hamiltons. They have asked the federal court here to order a new criminal investigation. (A Senate government affairs subcommittee investigation last year failed to find proof of a criminal conspiracy against Inslaw. But the subcommittee's staff said they had been hindered by Justice Department employees fearful they'd lose their jobs if they talked.)

Based on privately funded detective work, the Hamiltons say they believe that investors with personal links to the Reagan administration conspired with Meese Justice Department officials to ruin Inslaw. The investors' alleged goal was to acquire Promis—possibly at Inslaw's liquidation sale—and use the valuable software to win a bigger prize: the Project Eagle contract to deliver at least 12,000 new computer workstations, complete with software, to some 200 Justice Department sites nationwide.

"This is corruption, and it deserves to be prosecuted," contends Mr. Hamilton, who, with his wife, has resuscitated Inslaw, which now sells updated versions of Promis to private and municipal customers.

The Hamiltons' conspiracy theory is receiving point-by-point attention from the House Judiciary Committee investigators, in part because of Rep. Brooks's belief that government agencies periodically punish contractors who cross them. The committee staff also is considering questions the Hamiltons have raised about Project Eagle.

## Still No Compatibility

Among these are why, after the protracted battle over acquiring the Promis software, Project Eagle doesn't include a uniform case-management program for all of the Justice Department's branches. "It just doesn't make any sense at all," says Mr. Miller, the private computer consultant. Lawyers in the department's Washington headquarters can't tap into a common data base to tell if someone in a regional field office is working on the same case, confirms Tony Salvemini, a technology analyst with the General Accounting Office, a congressional watchdog agency.

Taking a dark view, the Hamiltons allege that the missing case-management system was supposed to be the pilfered Promis. Justice Department officials insist that the Eagle contract, awarded last June to Tisoft Inc. of Fairfax, Va., doesn't include a uniform case-management system for a more mundane, bureaucratic reason: Each of the department's major components wants to design its own.

Frustrated to find his own small company under congressional scrutiny and associated with the Inslaw controversy, Tisoft's owner and chief executive officer, Patrick Gallagher, says he doesn't know anything about the Hamiltons' charges or about their software. He adds, "I feel like we're caught up in a storm that has a life of its own."

PRIN/IC-07

EDITED BY STEPHEN H. WILDSTROM

PR|IW|IC-08

# CAN DICK THORNBURGH GET OUT OF THE BRIAR PATCH?

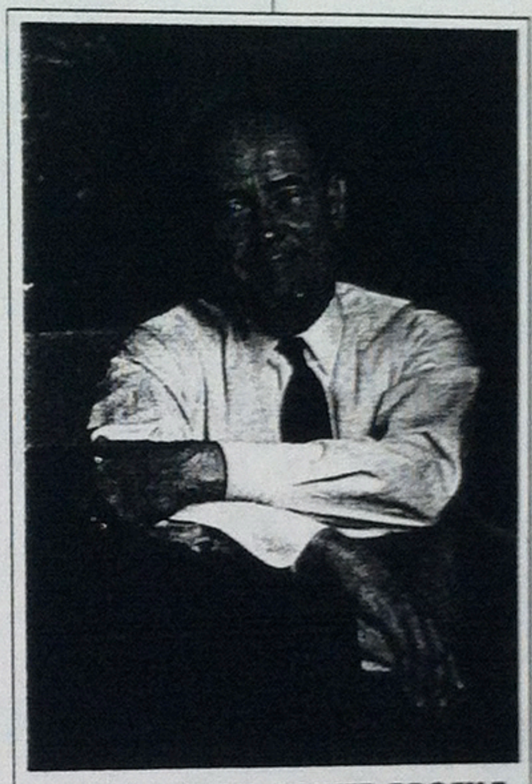
For nearly two years, Attorney General Richard L. Thornburgh has had Washington insiders scratching their heads. How could the former governor of Pennsylvania, who was known as such a savvy politician, seem so out of place in the Bush Administration? With a mid-May shuffle of the top management at Justice, Thornburgh finally acknowledged that he had serious problems. But it's far from clear whether he acted in time to restore his fading image.

Democrats are deeply suspicious of Thornburgh. Reports that a 1989 leak against House Majority Whip William H. Gray III (D-Pa.) may have come from within Justice's executive suite have revived grumbling that the department is willing to play politics with law enforcement. And Thornburgh's strained relations with civil-rights groups have hurt Republican efforts to reach out to black voters.

The departure of Deputy Attorney General Donald B. Ayer after only six months on the job gave Thornburgh a chance to bring in some old Washington hands. He elevated legal adviser William P. Barr to the No. 2 job and promoted Barr's deputy, J. Michael Luttig.

**SPARRING MATCHES.** Perhaps more important is the reassignment of two close aides from the Pennsylvania days. Political gatekeeper Robert S. Ross Jr. and spokesman David R. Runkel, whose press briefings had become tense sparring matches, have been moved to lower-profile jobs. In the new organization, division chiefs will be given more direct access to their boss. "If you look at the picture after the dust settles, it will be strongly representative of the Washington Establishment," says one senior Justice official.

The Thornburgh Justice Dept. has always had talent. Line officials such as Solicitor General Kenneth W. Starr and antitrust chief James F. Rill are widely respected. The problem was Thornburgh's personal staff, which was run by insular members of his Harrisburg mafia.



THORNBURGH: LOWER PROFILE

Legal adviser Barr's assignment will be to become the chief operating officer of a department that hasn't had a strong No. 2 since Thornburgh took over in the last months of the Reagan Administration. The Justice chief's original choice for the job, former New York U.S. Attorney Robert B. Fiske Jr., was shot down by conservatives. Ayer, a California U.S. attorney turned corporate lawyer, never found a way to work with the Pennsylvania gang.

The new hands have close ties to the White House, which seems to signal that Thornburgh's problems have begun to worry top Bush aides. Barr worked at the Central Intelligence Agency under George Bush and did a stint in the Reagan White House. Luttig also is a Reagan Administration veteran. And a new press secretary will be hired, possibly from the White House.

Observers on Capitol Hill regard the moves as long overdue. Congressional staffers grumble that Justice often weighs in late with objections to pending bills and tries to frustrate committees' efforts to gather information from the department.

The White House is also taking a stronger interest in policy issues. On May 14, after meeting with representatives of black groups, the President announced that he would try to work out a compromise bill overturning a string of Supreme Court decisions on affirmative action. Earlier, Thornburgh drew the ire of the civil-rights community by trying to derail the legislation with veto threats.

Officially, White House aides insist they are happy with the job Thornburgh is doing despite the turmoil at Justice. But Thornburgh has already damaged his political reputation and dimmed his chances for seeking another elected office. Mindful of Bush's fondness for a tidy, smooth-running Administration, Thornburgh's new objective may be to lower his profile—and simply survive.

*By Tim Smart*

## CAPITAL WRAPUP

### THRIFTS

Most of the zillions of dollars frittered away by the nation's improvident savings and loans are gone forever. But the Federal Deposit Insurance Corp. has launched an all-out effort to recover what it can of failed thrifts' junk-bond losses. The first target: Former Drexel Burnham Lambert Inc. junk wizard Michael Milken's $400 million settlement with the Securities & Exchange Commission. The FDIC is seeking a piece of the pie on the grounds that Milken enticed S&Ls into unsound investments. The FDIC plans to seek further restitution directly from Milken when he faces criminal sentencing this fall. The agency, a member of the Drexel bankruptcy creditors' committee, also hopes to squeeze what it can from the wreckage of the investment banking firm.

### CIVIL SERVANTS

The White House will warn that partisan politics will infiltrate the FBI and the CIA if federal employees are freed to work in political campaigns. That's the ostensible reason for an Administration threat to veto an overhaul of the Hatch Act already passed by the Senate. The law currently bars all federal civil servants, who overwhelmingly are Democrats, from partisan political activity.

### DEFENSE

A quiet rivalry is growing between two top Democratic defense mavens. Senate Armed Services Committee Chairman Sam Nunn (D-Ga.) grabbed the spotlight this spring with a series of speeches castigating the Bush Administration for not having a military strategy for a post-cold-war world. Now, House Armed Services Committee Chairman Les Aspin (D-Wis.) plans to take the stage with a presentation on military threats old and new. Says a House aide: "Instead of taking Nunn's conclusions further, Les wants to define some ideological space between the two of them."

KATHERINE LAMBERT

THE NEW REPUBLIC

**Another fine Meese mess.**

PRIN/EC-09

# COMPUTER TROUBLE

*By Jacob Weisberg*

Ursula Meese used to say that if her husband, Ed, were a woman, he would have gotten pregnant a hundred times. In a new book about the Wedtech scandal, *Too Good To Be True*, James Traub recounts the many instances of the attorney general's inability to say no to his corrupt chum E. Bob Wallach, which ultimately brought about his own downfall. A strikingly similar, and largely untold, story in which Wallach's name also figures is that of a small Washington-based computer software firm called INSLAW, whose owners contend they were ruined by cronies trying to capitalize on their relationships with Meese.

Despite substantial evidence of a conspiracy by officials inside the Justice Department—including, perhaps, Meese himself—to defraud the company, and despite evidence of a cover-up and of perjury by officials who worked under him, the Justice Department has yet to take seriously the charges of corruption stemming from the scandal. Until it does, the cloud Meese carried with him will continue to hang over the department.

The dauntingly complex story of INSLAW begins in March 1982, when the company's owners, Bill and Nancy Hamilton, signed a three-year, $10 million contract to equip the Justice Department with a case-management computer program called PROMIS. The software, which was developed by Bill Hamilton, enables the offices of U.S. attorneys to keep track of information on cases, witnesses, and defendants, and to manage their caseloads more effectively. Problems with the contract arose almost immediately. In essence, the Justice Department accused INSLAW of overbilling and began to withhold payment. Hamilton claimed the allegations were phony. In February 1984 Justice terminated part of the contract, which constituted the bulk of INSLAW's business, forcing the company into bankruptcy.

Hamilton had no idea why the deal had gone sour until he learned that a former employee, C. Madison "Brick" Brewer, whom he had fired several years earlier, had been put in charge of his contract at Justice. He protested Brewer's conflict of interest, but the bigger problem, he soon discovered, was that Deputy Attorney General D. Lowell Jensen had overall supervisory responsibility for the procurement. Jensen didn't much like INSLAW, or PROMIS. When he was district attorney in Alameda County, California, he had developed his own case-tracking software system, which he thought was superior. Jensen also took a special interest in the project because of his responsibility for Project Eagle, a $219 million plan to provide automated case management for the entire Justice Department.

When the contract troubles proved intractable, Hamilton contacted former Attorney General Elliot Richardson, who had served as an adviser to his company when it was still in California in the 1970s. In December 1985 Richardson and Hamilton went to the Justice Department to meet with Jensen and attempt to straighten out the disagreement. Richardson was surprised by the adamance of Jensen's opposition to PROMIS and became convinced that INSLAW was the victim of a private vendetta. He advised Bill and Nancy Hamilton, who were already in bankruptcy court, to sue the Justice Department for stealing their software, since it was already in use in dozens of U.S. attorney's offices even though it hadn't been paid for.

In the midst of their case, the Hamiltons met Anthony Pasciuto. Pasciuto, who was deputy director of the Executive Office for U.S. Trustees, which oversees bankruptcy estates on behalf of the courts, had a remarkable story to tell them: the Justice Department was improperly applying pressure on his office to convert INSLAW's Chapter 11 reorganization into a Chapter 7 liquidation, which would have meant that all the company's assets, including the rights for PROMIS, would be sold at auction. INSLAW's lawyers took depositions from those in the office who Pasciuto claimed knew about this scheme. One of them, U.S. Trustee Cornelius Blackshear, corroborated Pasciuto's story in full. Two days later, however, after a visit from department officials, Blackshear executed a sworn affidavit recanting his testimony. There had been no Justice Department pressure to convert INSLAW's case to a liquidation after all. Pasciuto, near tears as he was examined on the witness stand in bankruptcy court, recanted as well.

The Justice Department Office of Professional Responsibility recommended that Pasciuto be fired, noting in a memo that "but for Mr. Pasciuto's highly irresponsible actions, the Department would be in a much better litigation posture than it presently finds itself. . . ." After he was let go, Pasciuto reverted to his original version of the story: there had been pressure to turn INSLAW's bankruptcy into a liquidation.

The bankruptcy judge presiding over the case, George F. Bason Jr., believed Blackshear's and Pasciuto's original statements, and in 1987 he decided that Justice had acted illegally in trying to put INSLAW out of business. Bason sent Meese a letter recommending that he designate an appropriate outside official to review the dispute because of the prima facie evidence of perjury by Justice Department officials. Meese did nothing.

Later that year, after a two-and-a-half week trial, Bason ruled in favor of INSLAW in its suit against the Justice Department. The department "took, converted, stole" INSLAW's software "by trickery, fraud, and deceit." Bason found that Justice "engaged in an outrageous, deceitful, fraudulent game of cat and mouse, demonstrat-

ontempt for both the law and any principle of fair ding." He also ordered that it pay INSLAW $8 million compensatory damages and legal fees.

Bason's verdict was upheld on appeal by U.S. District Court Judge William B. Bryant. The Justice Department is now taking the case to the U.S. Court of Appeals. Three months after his decision in favor of INSLAW, Bason was denied reappointment to the bankruptcy court.

There is no evidence to suggest that Bason's failure to be reappointed was related to his decision in the INSLAW case. But a string of other coincidences soon gave the Hamiltons the idea that a larger conspiracy was at work against them. Bill Hamilton recalled that in April 1988 he had received a telephone call from Dominic Laiti of Hadron, Inc., a Fairfax, Virginia, computer services corporation. Laiti told him that he was interested in buying INSLAW in order to get its PROMIS software.

Here the plot thickens. Hadron was controlled by Dr. Earl Brian, a friend of Meese's and former member of Ronald Reagan's California gubernatorial Cabinet. At the time of the call, Ursula Meese owned $15,000 of stock in Brian's company. In his conversation with Hamilton, Laiti noted his firm's relationship with Meese, and said that he expected to receive Justice Department contracts for law enforcement software. When Hamilton said he wasn't interested in selling his business, Laiti reportedly said: "We have ways of making you sell." Laiti has said he doesn't remember calling Hamilton, and denies threatening him.

INSLAW alleges in legal documents that Brian was ultimately behind other attempts to take over the company during the same period, which was when its troubles with the Justice Department first began. Brian, Hamilton believes, hoped to buy INSLAW on the cheap and take advantage of his relationship with Meese to get lucrative computer contracts with the Justice Department, ultimately including Project Eagle, which was designed to utilize PROMIS software.

Another eerie portent was the behavior of the law firm representing the Hamiltons—Dickstein, Shapiro & Morin. Well into the case, their lawyer, Leigh Ratiner, was asked to leave the firm after ten years as a partner. Ratiner later told Senate investigators that he believed his firing was related to his aggressive posture in the INSLAW case. Attorneys at Dickstein had pressured him to delete references to Jensen, the Justice Department official opposed to PROMIS, from his original complaint because they had to "practice law with the DOJ." An interrogatory revealed that senior partner Leonard Garment had discussed the case with Meese and Deputy Attorney General Arnold Burns, who replaced Jensen after he was appointed a federal judge. After Ratiner left the firm, the case was handed to another Dickstein partner, who pressured INSLAW to seek an immediate settlement of $1 million. The Hamiltons rejected the recommendation. When attorney and client could no longer agree on how to proceed, INSLAW got a new lawyer.

The Hamiltons see a pattern in these events. A plan existed within the Justice Department, they contend, to drive them out of business in order to steer their contract, and ultimately the contract for Project Eagle, to Meese's friend Brian. This parallels the scenario of the Wedtech scandal, in which Meese's friend Wallach (a former partner at Dickstein whose six-year sentence is currently on appeal) tried to use his relationship with the attorney general to win sweetheart defense contracts. Here, as in Wedtech, there is no final proof that Meese understood the attempt to cash in on a relationship with him. But in the INSLAW scandal, unlike Wedtech, Meese and his wife actually stood to profit themselves, through the stock Ursula Meese owned in Brian's company. Meese and Jensen have both discounted all of these charges.

It's impossible to say for certain whether the Hamiltons' explanation is correct. Though there is compelling evidence that officials in the Justice Department acted wrongfully in pursuing a vendetta against INSLAW, the allegation of a high-level conspiracy remains a plausible theory in need of investigating. The Senate Permanent Subcommittee on Investigations, chaired by Sam Nunn, began an investigation in April 1988 and did not get anywhere near the bottom of the story. Shortly into its inquiry, according to papers filed in federal court by the Hamiltons, the Senate Judiciary Committee's chief investigator, Ronald LeGrand, received a call from an unnamed senior official at Justice, whom he had known for fifteen years and trusted completely. LeGrand said the official told him that the INSLAW case was "a lot dirtier for the Department of Justice than Watergate had been, both in its breadth and its depth." He told LeGrand that it was Jensen who had engineered INSLAW's problems from the very beginning. He also said he would come forward, as would other career officials in the Criminal Division who know about the conspiracy—but only if they were assured of protection against reprisals, and put under oath. LeGrand was never asked for his informant's name.

When Nunn's committee finished its investigation in September 1989, it published an eighty-page Senate report that concluded that although INSLAW was a victim of personal bias, there is "no proof of the existence of a broad conspiracy against INSLAW within the Department of Justice." The report offered its conclusion with the proviso, however, that the Justice Department had been uncooperative, refusing to allow witnesses to testify without representatives of the litigation division being present to "advise" them. The effect of their presence was to intimidate those who might otherwise have cooperated with the investigation. Only two of the thirty career officials the Hamiltons say know the most about the matter testified. According to the report, "The Staff learned through various channels of a number of Department employees who desired to speak to the Subcommittee, but who chose not to out of fear for their jobs." The House Judiciary Committee, chaired by Representative Jack Brooks of Texas, recently began a new investigation.

hen Richard Thornburgh, who was known as "Mr. an" for his efforts to root out government corrupon as U.S. attorney in Pittsburgh in the early 1970s, was appointed attorney general, the Hamiltons hoped he would appoint an independent counsel to investigate the INSLAW matter. Short of that, they wanted a genuine internal investigation supervised by a Justice Department attorney who wasn't involved with the case. "The department has a duty—independent of us—to conduct a really thorough investigation," Richardson says.

In December 1989 the Hamiltons filed a suit that seeks to compel the attorney general to investigate. They do not stand to gain financially from this new case, but say they are pursuing it because, after seven years of litigation, they want justice done. Though they have yet to collect any portion of the $8 million awarded them by the bankruptcy court pending the Justice Department's appeal, the Hamiltons are back in business selling an updated version of PROMIS to state, municipal, and private law offices.

In its response to their new suit, the Justice Department does not answer the Hamiltons' factual allegations, but argues that their case should be dismissed on the basis of separation of powers: the judiciary branch cannot force an executive agency to undertake a criminal investigation. The Justice Department also asserts that the Public Integrity Section of its Criminal Division has looked into charges of misconduct arising out of the INSLAW matter and found them to be without merit. Thornburgh repeated this point in a letter to Brooks. The attorney general claimed that there was insufficient evidence to prosecute any current or former Justice Department employees.

When I asked Thornburgh about INSLAW at a press breakfast a few months ago, he seemed to have forgotten his stated position that the Justice Department has already investigated the matter. "Until the civil litigation is cleared up, we're not in a position to undertake an assessment of what culpability, if any, exists within the department, or the department's past or present employees," he said. This statement—that Justice hasn't yet decided whether to investigate—is closer to the truth. Thornburgh knows that there has been no real investigation within the department. Of thirty material witnesses named by the Hamiltons in their brief, only one was contacted by investigators. LeGrand still has not been asked for the name of his "dirtier than Watergate" informant.

The remaining mystery is why the attorney general doesn't care to find out what happened to the Hamiltons. After all, the INSLAW affair implicates Meese, Jensen, and others, but it cannot very well indict Thornburgh, who was in Pennsylvania when the alleged conspiracy took place. As *The Washington Post* editorialized about the case earlier this year, Thornburgh "should be leading the investigation of alleged internal wrongdoing, not stonewalling it." Mr. Clean, it seems, got left behind in Pennsylvania. •

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PRIDN/IC-10

# Probe threatens Tisoft contract

## *Irregularities found in award of $76 million Project Eagle*

By BONAR MENNINGER

Project Eagle, the massive Justice Department computer procurement awarded last summer to a Vienna systems integration firm, may be in jeopardy as the result of irregularities uncovered in the course of an ongoing congressional investigation.

Rep. Jack Brooks, chairman of the House Judiciary Committee, raised the startling possibility of terminating the $76 million procurement in a House appropriations conference June 20. Brook's committee began investigating the hardware buy last fall after allegations surfaced that the contract had been improperly awarded to Vienna-based Tisoft Inc. in June 1989.

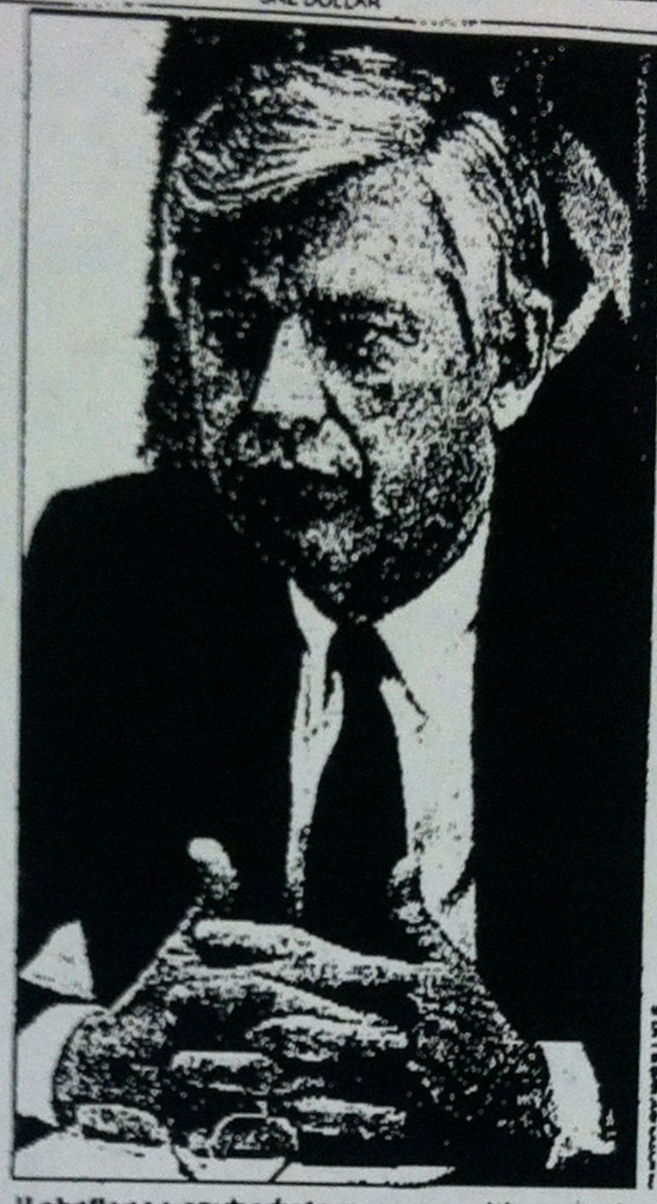
Project Eagle is designed to automate 200 U.S. Attorneys offices around the country and is the Justice Department's largest contract ever. Some estimates put the contract's ultimate value at around $800 million if all options and follow-ons are exercised.

According to to a statement released by Brooks last week, the still-unfinished House Judiciary probe has shown that Eagle "has all the signs of a procurement in trouble — schedule changes, cost overruns and numerous equipment modifications."

As a result, Brooks said, the first phase of Eagle may "far exceed" its original $76 million price tag. He consequently recommended to the House Appropriations Committee that next year's funding for the project be cut from $23.1 million to the fiscal 1990 level of $12 million.

"The $12 million authorization figure will allow the contract to continue, but at a slower, more prudent pace," Brooks said. "In the end, however, we may have to kill this project."

When informed of Brooks' comments, Pat Gallagher, president of Tisoft, called the congressman's assessment of Eagle inaccurate and unfair and said he remained confident the project would not be killed or its funding significantly reduced.



'I challenge anybody to come up with any evidence that Tisoft is not doing an extremely good job and that the system is not working extremely well.' Pat Gallagher, Tisoft president.

"I challenge anybody to come up with any evidence that Tisoft is not doing an extremely good job and that the system is not working extremely well," Gallagher said. "I think Jack Brooks is pretty unhappy with the Department of Justice and it probably goes back a lot of years. Eagle is an interesting and tantalizing target, and it's possible Brooks has a completely different agenda in going after this thing."

It remains unclear whether problems identified by Brooks' investigators are related to the Inslaw affair — the much-publicized contract fight between Justice and Washington software firm Inslaw Inc. and the controversy that precipitated the Judiciary probe in the first place — or whether the difficulties represent entirely separate issues.

Also unclear is the extent to which the "schedule changes, cost overruns and numerous equipment modifications" are emanating from Justice's implementation of the contract or Tisoft's performance on it.

Brooks provided no information about the specific nature of the difficulties facing Eagle and Judiciary Committee staffers declined to comment on the matter last week.

Brooks' Judiciary Committee began investigating Eagle last fall, after Bill Hamilton, president of Inslaw, alleged the procurement was designed around pirated copies of Inslaw's Promis case-management software. Hamilton has also asserted to investigators that the award to Tisoft may have been part of a larger criminal scheme allegedly aimed at delivering Promis and lucrative future contracts to cronies of former Attorney General Edwin Meese.

In successive decisions, two federal judges have ruled that the Justice Department fraudulently and illegally tried to misappropriate Inslaw's software in the mid-1980s and then attempted to drive the company out of business.

Brooks made no mention of Hamilton's allegations in his statement outlining the problems investigators have uncovered in the contract and noted only that the Judiciary probe was triggered nine months ago following allegations that Eagle had been "wired" by Justice officials for an incumbent vendor.

Tisoft's Gallagher, who has repeatedly dismissed the assertion that his firm was in any way involved in the Inslaw matter, last week claimed that the Judiciary Committee's efforts to substantiate Hamilton's charges have failed.

"My sources tell me that (Brooks's investigators) have all but thrown in the towel on the Inslaw portion of this thing," Gallagher said. "They've found nothing because there's nothing to find. Hamilton may well have been wronged by the Justice Department, but it's also obvious he's going to do whatever he can to create a smoke screen around Eagle, whether (the allegations) are true or not, because it serves his best interest to do so."

Neither Hamilton nor Charles Work, Inslaw's attorney, would comment on the latest developments in the Eagle-Inslaw controversy.

Sources last week said it was likely the House Appropriations Committee would accept Brooks's recommendation to cut Eagle's funding in fiscal year 1991, given the Texas Democrat's long-standing expertise and influence in government computer procurement matters.

The bombshell about Eagle comes two months after Attorney General Richard Thornburgh abandoned months of resistance to the Eagle-Inslaw probe and agreed to provide House investigators with unlimited access to key Justice Department documents and personnel relating to or involved with the contract and the Inslaw controversy.

Sources said Thornburgh yielded to pressure by Brooks in order to head off expected criticism about his lack of cooperation in then-pending appropriation hearings before the Judiciary Committee.

Informed sources said last week that while Thornburgh has continued to cooperate with investigators, "institutional antibodies" in the Justice Department's various branches have repeatedly attempted to stall or bar investigators' access to files. As a result, the investigation has been slowed and it now appears doubtful public hearings will be held into the Eagle procurement or the Inslaw matter before next fall. The committee had originally hoped to hold hearings in July, sources said.

# The Press Democrat

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House Chairman Accuses Justice Department of Coverup in Computer Case
BY JAMES ROWLEY
Associated Press Writer

WASHINGTON (AP) -- The chairman of the House Judiciary Committee accused the Justice Department on Wednesday of engaging in a coverup by withholding documents about its dealings with a computer firm.

Rep. Jack Brooks, D-Texas, said the committee cannot complete its investigation of the Justice Department's alleged mistreatment of INSLAW, Inc., because the agency refuses to turn over some 200 documents it considers privileged.

Brooks indicated the committee would conduct further discussions to determine if it should subpoena the documents.

Steven R. Ross, the general counsel for the House, charged that in refusing to turn over the documents Attorney General Dick Thornburgh was trying to exempt his department from congressional investigations of waste, fraud and abuse.

The Justice Department has been locked in a lengthy court battle with INSLAW, Inc., a computer software firm that alleges that government officials conspired to steal its product and drive it out of business.

The department is appealing a bankruptcy court's finding, confirmed by a federal district judge, that officials used ""trickery, fraud and deceit'' to steal software that INSLAW had devised for U.S. attorneys offices.

The company's president, William Hamilton, estimated that the Justice Department's actions cost INSLAW ""several hundred million dollars'' in lost business.

The Judiciary Committee is investigating INSLAW's allegations that top Justice Department officials under former Attorney General Edwin Meese III engaged in a criminal conspiracy to drive the company out of business and deliver lucrative government computer contracts to political friends of the Reagan administration. The Justice Department denies those allegations.

Brooks said the Justice Department's refusal to turn over 200 documents the agency considers privileged has stalled the investigation.

In a Sept. 26 letter to the committee, Thornburgh told the panel he could not turn over the material because of an obligation to ""protect documents compiled by attorneys in connection with pending litigation, which are not in the public domain and could be described as "litigation strategy' or "work product.'''

""That could be described as coverup or hiding or holding out,'' Brooks said at a hearing of the panel's economic and commercial law subcommittee to discuss what steps to take to force production of the documents.

Ross noted that in an Aug. 21 letter, Thornburgh urged the committee to review Justice Department documents on the

ANSLAW matter before launching an investigation into ""unsubstantiated innuendo.''

""On the one hand, the attorney general invited the committee to review the documents and then when the committee asks to see the very same documents, he has switched positions and now is saying those documents are privileged,'' Ross said.

Ross said the Justice Department made a more direct attack on Congress's power to investigate waste and fraud in the government in a Dec. 4 letter to the panel's ranking Republican member, Rep. Hamilton Fish of New York.

The letter by W. Lee Rawls, assistant attorney general for legislative affairs, states that ""congressional investigations are justifiable only as a means of facilitating the task of passing legislation.''

Ross said the Justice Department is trying to ""create a new standard for what is acceptable means of committee investigation.''

""What that proposed standard would do would be to eradicate the time-honored role of Congress of providing oversight which is a means that has been upheld by the Supreme Court ... by which the Congress can assure itself that previously passed laws have been properly implemented.''

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PR IW IC-11

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Title: Inslaw charges take their toll at Justice. (Inslaw Inc. accusations that Justice Department stole is case management software)

Author: Grimm, Vanessa Jo.

Summary: Inslaw Inc's accusation that the Justice Department stole its Promis case management software under the massive Project Eagle office automation program has led the House Judiciary Committee to cut the Eagle budget in half pending investigation into the small software firm's allegations. Judiciary chmn Representative Jack Brooks froze Eagle project spending at the 1990 level. Inslaw pres William Hamilton is pursuing legal action against the department and accuses Justice of trying to drive its company into bankruptcy and of 'wiring' the $76 million Eagle contract, awarded to Tisoft Inc, to benefit cronies of Edwin Meese. Brooks calls Eagle a 'procurement in trouble.'

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Descriptors..

Company: INSLAW Inc. (cases).

Topic: Software Protection
Mismanagement
Legal Applications
Government Agency
Software Publishers
United States. Department of Justice
Investigations
Software Piracy
Purchasing Systems.

Record#: 08 717 410.

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Full Text:

Inslaw Charges Take Their Toll at Justice

Inslaw Inc., the small Washington software company that has accused the Justice Department of stealing its case management software, may not have won its legal war with the department, but its actions affected a pair of Justice programs.

Most recently, the House Judiciary Committee authorized halvig the budget of Justice's massive office automation program, Project Eagle, becuase of the committee's pending investigation into Inslaw's allegations. Meanwhile, the department canceled a procurement for case management software in the face of a departmental protest by Inslaw.

The Judiciary chairman, Rep. Jack Brooks (D-Texas), slashed Eagle's 1991 spending authority from $23 million to 12 million, freezing project spending at its 1990 level. He said the project needed to be slowed down until committee investigations establish there was nothing inappropriate about the Project Eagle procurement.

"I have been overseeing ADP procurements for almost 25 years, and it is always hard to recommend delaying an agency's efforts to automate," Brooks said. "I would much rahter be on the advocate's side of this fight."

Justice officials are confident they can assure Brooks of Project Eagle's legitimacy, said Stephen R. Colgate, deputy assistant attorney general for information and administrative services. The department has installed almost 3,000 workstations and wanted to complete 9,000 installations by next fall.

"There is unequivocally no relation between Eagle and Inslaw," he said. "When the smoke clears and we can get away from crazy allegations, regulators outside of the department will truly see how important Eagle is to the federal law enforcement efforts."

Project Eagle is Justice's effort to provide office automation to its 90 district attorney offices and many other users. The department awarded the $76 million contract to Tisoft Inc. of Fairfax, Va., last June.

Charges of Mismanagement

Since before its award, Eagle has been surround by investigations and charges of department mismanagement involving a $10 million 1982 contract Justice awarded Inslaw to develop a case management system.

Inslaw president William Hamilton, who continues to pursue his grievances in a series of court cases, alleged the department stole his Promis case management software and tried to drive his company into bankruptcy. He also has claimed the department "wired" the Eagle award to benefit cronies of former Attorney General Edwin Meese.

Brooks jumped on the Inslaw bandwagon late last year and has a team of investigators reviewing Hamilton's allegations and exploring the Eagle procurement. "It has all the signs of a procurement in trouble -- schedule changes, cost overruns and numerous equipment modifications," Brooks said. "As a result, the department's original price tag of $76 million for the procurement may be greatly exceeded."

Brooks is facing a strong challenger in the November election. It appears unlikely Judiciary will complete its Inslaw and Eagle probe, issue a report or hold hearings before next year.

"It's too early in the process to start jumping off the roof," Colgate said. "We're fully cooperating with the committee, letting them interview our people and providing them with all the documents they request. We're shipping it out by the truckload."

The fate of Eagle funding will not be decided before budget conference hearings in the fall.

On the case management front, Justice killed plans to procure case management software for the Land and Natural Resources Division. In April, Inslaw protested the department's request for proposals and called the procurement a new attempt by the department to steal Promis.

Inslaw's Allegations

In its protest, Inslaw said the department was requesting the capabilities available through Promis buy keeping Inslaw out of the procurement by forbidding vendors to bid off-the-shelf products. Inslaw also alleged that through the procurement Justice was attempting to convert existing Promis source code in use at the department but owned by Inslaw.

Justice officials repeatedly denied these charges. The department halted the procurement but also dismissed the protest as moot.

Colgate said the decision depended on changes in department plans, not on Inslaw's allegations. A number of Justice divisions want to procure case management packages, he said.

"We're seeing if there's a more efficient approach," he said. Colgate said department officials had wanted to decide on an acquisition strategy before the end of July.

In a letter to Inslaw attorney David S. Cohen, the department said, "We have no immediate plans to resolicit the Lands Division requirement, but in all likelihood, we will issue a new RFP for development of some case management system at a future date."

SAN FRANCISCO

# Daily Journal

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PRIN/IC-13

# Charges of Justice Dept. Corruption Target San Francisco Federal Judge

By TERRY CARTER
*Daily Journal Staff Reporter*

WASHINGTON — The long simmering Inslaw case that charges high-level corruption in the Justice Department under Edwin Meese — and points an accusing finger at a man now on the federal bench in San Francisco — is expected to boil over today in a congressional hearing.

A hard-nosed Texas congressman who heads the House Judiciary Committee has said he will throw down the separation-of-powers gauntlet and look into whether the Justice Department is wrong in claiming "privilege" while withholding more than 200 key documents.

"The Department has thwarted attempts by Congress to learn the complete truth concerning the Inslaw case," Rep. Jack Brooks, D-Texas, said Tuesday in a news release announcing the hearing.

Inslaw Inc. has battled for nearly seven years over the termination of its contract to provide software to help U.S. attorneys track cases. The software developer and company owner, William Hamilton, has charged in various court papers that there was a conspiracy to drive him into bankruptcy so his contract and software could be taken over by a rival company connected to high-level Justice Department officials.

Among the swirling accusations in the case are charges that U.S. District Judge D. Lowell Jensen of San Francisco, when he was deputy attorney general under Meese, orchestrated an end to the contract and forced Inslaw's liquidation in bankruptcy court.

Jensen had developed his own case-tracking software while he was district attorney of Alameda County, Inslaw's owner has charged, and wanted to steer the contract and control of the Inslaw software to another company.

Inslaw has charged that the other company was owned by a Meese friend, and that Meese's wife, Ursulla, owned stock in it.

Earlier this year, U.S. District Judge William B. Bryant of Washington, who already had ruled that the Justice Department acted "willfully and fraudulently" to take the software from Inslaw, said in a footnote to another opinion he believes Congress is the best forum for an investigation of the matter.

That came in his denial of a writ of mandamus filed earlier this year on behalf of Inslaw by former attorney general Elliot Richardson. The mandamus request asked the judge to order the Justice Department to conduct a thorough investigation of the affair.

An investigation begun in 1988 by the Senate Permanent Subcommittee on Investigations found no wrongdoing, but added in its report that the Justice Department had been uncooperative and kept numerous witnesses

*Continued on Page 6*

# Panel Begins a Probe Of Corruption Charges

Continued From Page 1

from testifying by putting them in fear for their jobs.

Brooks, known for being tough and relentless, then began his own investigation with the House Judiciary Committee staff.

"The committee's investigation has been stymied on more than one occasion by the department's refusal to fully cooperate with the committee," Brooks said Tuesday in his prepared statement. "After months of stonewalling and footdragging" by the Justice Department, he said, he personally asked Attorney General Richard Thornburgh to intervene to ensure cooperation with his committee's investigators.

Despite Thornbugh's agreement to cooperate, Brooks said, the stonewalling continued.

In September, Brooks wrote again to the attorney general asking for full access to documents. Thornburgh responded that his agreement did not include sensitive documents related to the ongoing Inslaw litigation.

A bankruptcy judge awarded Inslaw awarded $8 million, which Bryant cut to $6 million while upholding the findings. The case is on appeal to the U.S. Circuit Court of Appeals for the District of Columbia. *Inslaw Inc. v. Thornburgh*, Civ. 89-3443

"Apparently, the attorney general believes these materials are 'protected' and somehow shielded from congressional review," Brooks said Tuesday. "These hearings will provide an opportunity to review the legitimacy of the attorney general's claims and determine whether the committee should force the production of these important records."

A Justice Department spokesman, responding to Brooks' news release, said the department "believes Congress has misunderstood the nature of the documents," which are not evidence but rather work product "generated by government's counsel in the litigation."

The constitutional challenge here, involving separation of powers and executive privilege, has never been settled by the Supreme Court.

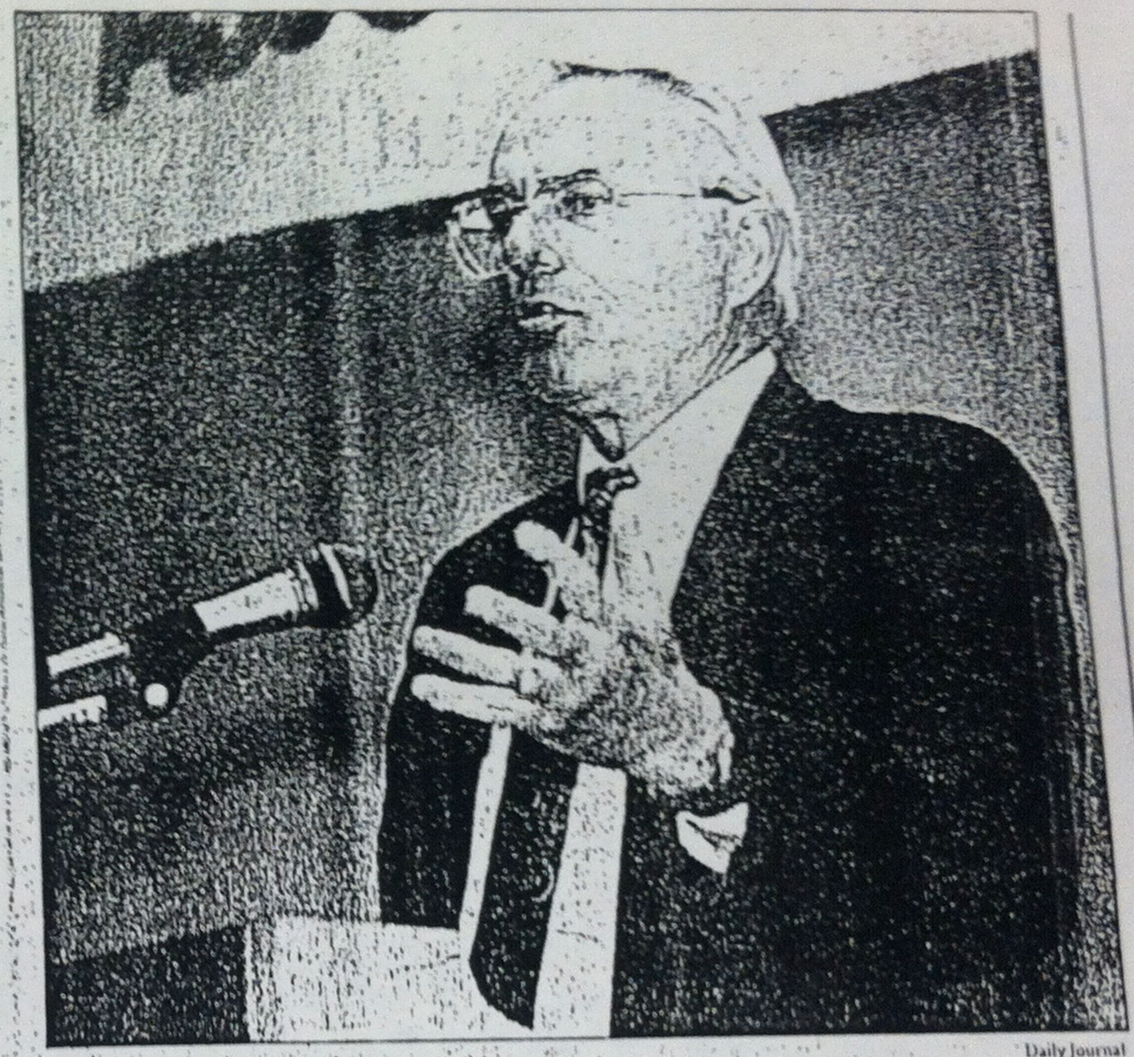
"As a legal matter, it's really up in the air," says Lewis M. Sideman, a constitutional law professor at the Georgetown University Law Center. "The history is that these things are settled politically. But first, a lot of constitutional rhetoric is thrown around as a way of influencing what is a political rather than legal judgment."

Brooks said he wants to get past Thornburgh's claim of privilege on documents "that may prove the department's guilt or innocence."

Despite findings by a bankruptcy judge and a federal district judge that the Justice Department acted fraudulently in the Inslaw matter, Brooks said, "the department, through two administrations, however, has steadfastly denied any wrongdoing by its officials, claiming that its conflict with Inslaw is nothing more than a contract dispute."

Brooks said the bankruptcy and district court rulings support, in part, allegations that "high-level Department of Justice officials conspired to force Inslaw into bankruptcy" and let a rival company take over its case-management software.

This is Brooks' first term as chair of the Judiciary Committee, and in this matter he is wielding some of his expertise from his work as chairman of the Government Operations Committee, where he was effective in shaping government procurement activities.



Daily Journal

**D. LOWELL JENSEN** — *Among the swirling accusations in the case are charges that the U.S. district judge, when he was deputy attorney general, orchestrated an end to Inslaw's contract with the Justice Department and forced the company's liquidation in bankruptcy court.*

In Tuesday's news release, Brooks said the hearing also would give the committee a chance to review "other contracting and management problems that are currently plaguing the department."

One of today's scheduled witnesses is from the comptroller general's office and is to testify about a Government Accounting Office report on the Justice Department's lack of managerial and technical capabilities for making large-scale acquisitions of computer systems and software.

Also scheduled to testify are: Inslaw owner Hamilton and his wife, Carol; Elliot Richardson; Charles R. Work, Inslaw's attorney; George F. Bason Jr., who has claimed he was denied reappointment as a bankruptcy judge for ruling against the Justice Department in the Inslaw case; Steven R. Ross, general counsel to the clerk of the House of Representatives; and Charles Tiefer, deputy general counsel to the House of Representatives.

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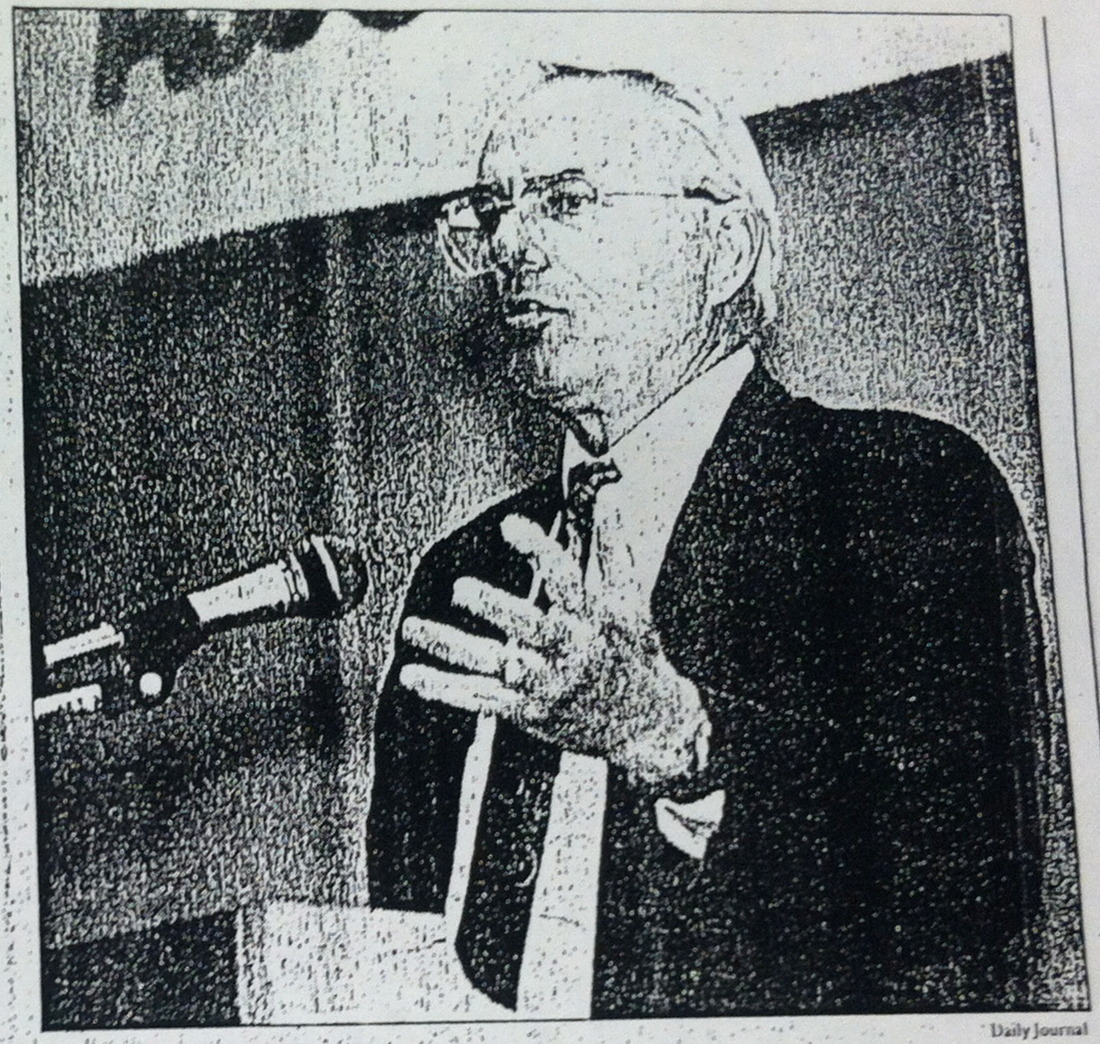
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There were no witnesses scheduled on behalf of the Justice Department

The Washington Post

THURSDAY, DECEMBER 6, 1990

MARY McGRORY

PR/IN/IC-14

# Nixon's Shadow Lengthens

The words were bouncing off the walls of the House Judiciary Committe hearing room, the old charged words like "executive privilege," "attorney-client privilege," "stonewalling," "perjury," "criminal conspiracy" and "subpoenaing documents."

In the witness chair sat Elliot L. Richardson, polysyllabic and distinguished as ever, talking, as only a martyr can, about rectitude in government. On the dais sat three committee members who voted to impeach Richard M. Nixon on the heavy, historic night of July 27, 1974.

But it wasn't about Watergate. It was about a new case of confrontation between the executive and the Congress, this time between an attorney general, Dick Thornburgh, who doesn't really need to get involved, and a prickly, irreverent Judiciary subcommittee chairman, Jack Brooks (D-Tex.).

This is the case of Inslaw, a tangled tale about a software company done wrong by the Justice Department, in the time of Edwin Meese III. The story line is complicated, but the theme is unrelenting and unrelieved government malevolence. The victim, William A. Hamilton, president of Inslaw (named after the old nonprofit Institute for Law and Social Research), calls it "organized piracy by the U.S. government." He was driven into bankruptcy by an unjust Justice Department.

Hamilton and his wife, Nancy, the company's vice president, sat at the table with Richardson and Charles Work, former president of the D.C. Bar. Behind the Hamiltons were three of their five children. They looked the picture of the model, high-tech American family. In March 1982, they happily signed a $10 million contract with the Justice Department for their software product, which enables the department to keep track of large numbers of legal cases.

Almost immediately, their troubles began, problems that Richardson said in his immaculate diction "seemed capable of resolution." William Hamilton said they were "engineered, sham contract disputes" staged by former assistant attorney general D. Lowell Jensen. The Justice Department stopped payment and advised Hamilton to sell out to a thug, who warned him he had "ways to make you sell." Jensen, says Hamilton, was elbowing him aside so he could put through "a massive sweetheart contract" to benefit friends of Ronald Reagan.

The matter is still in the courts. Nothing, however, can explain the curious conduct of Thornburgh, who is refusing on a claim of the "attorney work-product privilege" and the "attorney-client privilege" some 200 confidential documents, which Brooks says he needs.

Since all of the chicanery occurred during the regime of Meese, Mr. Conflict-of-Interest Himself, Thornburgh's obduracy is bizarre. By withholding documents, he invites comparison with the bad old days of Nixon, when intrigue and backstabbing and perjury were standard government operating procedure.

If Thornburgh is holding back on principle—he is notoriously anti-disclosure—he has to be a fanatic, because the Justice Department says this is just a little contract flap. He makes it awfully hard to believe he is not covering up a potentially explosive scandal on the Watergate scale. We must hope the shredding machines are under strict surveillance at Justice.

Richardson speculated that "a comprehensive investigation would only expose criminal activity on the part of Justice employees and make the department liable for large sums of money." Richardson gave the department's Office of Public Integrity a list of 30 witnesses who could testify about the plot against the Hamiltons. The office contacted just one.

To make things look worse, Thornburgh treated Richardson like a dog. He refused to meet him, did not answer three letters. Why?

The war against the Hamiltons was conducted on all fronts. The bankruptcy judge who took Inslaw's side in bankrupcty proceedings was not reappointed. George Francis Bason Jr. told his sad and gripping story to the subcommittee. He noticed early on, he said, that the Justice Department had lied, cheated and stolen. He found its witnesses incredible and perjurious. He found in the department's ethics officer "a willful blindness to the obvious."

The aggrieved Bason, a master of detail, said he thinks Justice tampered with the merit selection process.

Rep. Tom Campbell (R-Calif.), youthful and earnest, asked the judge if he had proof of this dirty work.

"No," said Bason, who has had trouble finding work—he's "too controversial" for large law firms—"but you have a dead body, and you have a motive."

That's a pretty good summation of the Inslaw case, and it's odd that Dick Thornburgh is practically insisting that it is the only way to look at it.

The Washington Post

SATURDAY, DECEMBER 8, 1990

PR [IW/IC - 16

AN INDEPENDENT NEWSPAPER

# *Another INSLAW Inquiry*

INSLAW, a small computer software company in this city, has been involved in a legal dispute with the Justice Department for more than six years. This week the matter was taken up in a new forum, the House Judiciary Committee, and the potential for a clash between the legislative and executive branches is escalating. The company developed software that enabled U.S. Attorneys' offices all across the country to keep track of cases and signed a contract with the government in March of 1982. There were problems from the beginning, and the agreement was terminated two years later. The company was forced to file for bankruptcy, and its officers charged that they were driven out of business by Justice Department lawyers who wanted, in effect, to steal their product and award the contract to friends with contacts inside the department. A bankruptcy judge ruled in favor of INSLAW, finding that the department "took, converted and stole" INSLAW's property "by trickery, fraud and deceit." The U.S. District Court here upheld that finding and ordered the government to pay millions in damages. That case is now on appeal.

Not surprisingly, Congress became concerned about this apparent scandal. The Senate's permanent subcommittee on investigations conducted an inquiry, but it was hamstrung by the refusal of Justice Department officials to cooperate. The House Judiciary Committee is proving to be a tougher adversary. While Attorney General Dick Thornburgh initially promised to assist the committee, he has now taken a position that hundreds of documents relevant to the investigation cannot be made available because the case is still in litigation. On Wednesday chairman Jack Brooks held a public hearing on the matter at which Steven Ross, the institutional lawyer for the House, cited numerous precedents against the department's reasoning. It's a good bet that when Congress reconvenes, the committee will subpoena the documents.

It's hard to understand why the attorney general is refusing to cooperate. No one has asked that the material sought be made public or shared with INSLAW's lawyers. The investigation is not about the conduct of private citizens but alleged wrongdoing by government lawyers, and the charges are extremely serious. The Judiciary Committee has not only the right but the responsibility to look into these allegations, and the department's stonewalling only undermines its own credibility, not just with the committee that oversees the department's operations but with the public as well.

The Washington Post

THURSDAY, DECEMBER 6, 1990

PRIINIC-15

# Department Accused of Keeping Inslaw Evidence

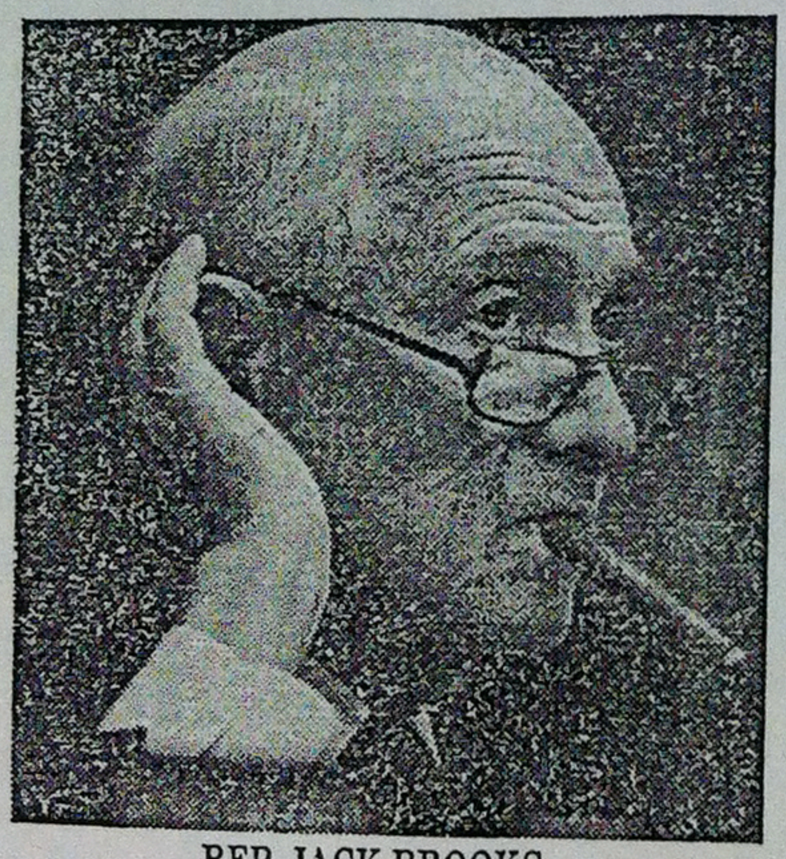
By Albert B. Crenshaw
Washington Post Staff Writer

The chairman of the House Judiciary Committee yesterday accused the Justice Department of withholding documents to frustrate his panel's probe of alleged improprieties in the department's dealings with Inslaw Inc., a Washington-based computer software company.

The committee is considering whether to subpoena the documents or to attempt in some other way to force the department to produce the documents.

The case involves Inslaw, which wrote a computer program that allows the Justice Department to keep track of a large number of court cases. Inslaw and its top executive, William A. Hamilton, have accused the department of conspiring to drive Inslaw out of business so that friends of high-ranking Reagan administration officials could get control of the program and market it profitably. Hamilton's testimony yesterday reasserted those claims.

A federal bankruptcy judge concluded that the Justice Department "stole" Inslaw's proprietary software and did, in fact, try to drive the firm out of business. Those findings were upheld on appeal by a U.S. district judge, but the legal battle continues.



REP. JACK BROOKS
**... documents may prove "innocence or guilt"**

The House committee's complaints mirror those of others who have sought to get to the bottom of the Inslaw affair. An earlier Senate probe found the Justice Department uncooperative, and the judge in the bankruptcy case, George Francis Bason Jr., said numerous department witnesses seemed to suffer from amnesia.

*"The department has thwarted attempts by Congress to learn the complete truth concerning the Inslaw case."*

—Rep. Jack Brooks

"The department has thwarted attempts by Congress to learn the complete truth concerning the Inslaw case," said House Judiciary Committee Chairman Jack Brooks (D-Tex.). "Justice has repeatedly denied both the House and Senate investigating committees access to critical documents that may prove the department's innocence or guilt."

At issue are internal memorandums and other documents used by the Justice Department in the bankruptcy case and in defending against a lawsuit filed by Inslaw.

Attorney General Richard L. Thornburgh wrote Brooks, refusing to release "litigation strategy" files relating to Inslaw. According to Brooks, Thornburgh argued that these are "sensitive documents related to the ongoing litigation" and thus are "privileged" and "shielded" from congressional inquiry.

This assertion of privilege was challenged by Steven R. Ross, general counsel to the clerk of the House. Citing legal precedents from the Teapot Dome, Watergate and Iran-Contra scandals, Ross told the panel that it has the legal authority to force the Justice Department to produce the papers, and that the only question for the panel was how it wanted to go about it.

Ross noted that the panel could issue a subpoena or use its contempt powers. He also noted that as the authorizing committee for the department, it could threaten the department's funding, a tactic Brooks said had been effective in the past.

The Washington Times

MONDAY, DECEMBER 10, 1990 **

PR/IN/IC-17

# House may subpoena the Justice Department

By Jerry Seper
THE WASHINGTON TIMES

The House Judiciary Committee may issue subpoenas for hundreds of secret documents describing the Justice Department's controversial dealings with a Washington-based computer company.

Committee members, including Chairman Jack Brooks, have been upset at Attorney General Dick Thornburgh's continued refusal to release internal memos and other documents describing Justice's handling of a $10 million contract with Inslaw Inc.

"The department has thwarted attempts by Congress to learn the complete truth concerning the Inslaw case," Mr. Brooks, Texas Democrat, said last week. "Justice has repeatedly denied both the House and Senate investigating committees access to critical documents that may prove the department's innocence or guilt."

Mr. Thornburgh told the committee in a letter that the department would not release the documents because they were considered "litigation strategy" and as a result are "privileged" and "shielded" from congressional scrutiny.

The claim was challenged by Steven R. Ross, general counsel to the clerk of the House. He told the committee it has a right to the documents.

Inslaw President William A. Hamilton has said that a Justice Department decision to withhold payments to his company under a 1982 contract forced the firm into bankruptcy five years ago.

Since 1988, two federal courts have agreed. They ruled in separate opinions that Justice Department officials had maliciously tried to force Inslaw into bankruptcy in order to steal valuable computer software from the company.

The dispute revolves around a $10 million software contract awarded to Inslaw in 1982 to provide computer programs — named "Promis" — that would give 20 U.S. attorneys' offices the ability to keep tabs on their caseloads.

According to Mr. Hamilton, Justice Department officials began withholding payments to the company in early 1983, one month after the department demanded a copy of the proprietary software, claiming the firm had violated the contract by not informing the government about new bank credit.

In January 1988, U.S. Bankruptcy Judge George Bason Jr. found that the Justice Department had "in bad faith, vexatiously, in wanton disregard of the law and facts, and for oppressive reasons" tried to steal the software and force the company to liquidate.

Last year, U.S. District Judge William B. Bryant upheld that ruling on appeal and ordered the Justice Department to pay Inslaw $6.1 million in damages.

In a sworn affidavit, Mr. Hamilton has said the department wanted to obtain the Inslaw software to help high-ranking Reagan Administration officials, including former Attorney General Edwin Meese III, who were seeking a contract worth as much as $200 million to install the Promis software on computers in most department offices.

Mr. Meese has denied any wrongdoing.

Department officials have proposed that the matter be resolved by a court-appointed mediator. Mr. Hamilton has denounced this proposal, saying evidence of improper activities by high-level Justice officials has yet to be brought to light through the legal discovery process.

"There is the continued pretense that this is simply a complicated, private contract dispute between a vendor and the government," he said. "That's not what this is. This is about a criminal conspiracy that has reached into the Justice Department from top to bottom."

An internal Justice Department probe ended in July when investigators said they found no evidence of criminal wrongdoing.

• *Laura M. Litvan contributed to this report.*

PR/IN/IC-18

## Meese's pieces

What did William Weld know about INSLAW (Institute for Law and Social Research) and when did he know it? Doesn't sound very glamorous, does it? But there's a 5-year-old lawsuit and a congressional investigation under way in Washington into the handling of a $10 million INSLAW software contract with Ed Meese's Department of Justice. In the course of extremely complex litigation during which INSLAW has managed to prove that various Ed Meese allies tried to kill their contract, the company's lawyer, former Attorney General Elliot Richardson, asked the Department's Office of Public Integrity to contact 30 witnesses within DOJ to testify on behalf of his clients. Overseeing the activities of the OPI when Richardson made his demarche in February 1988 was none other than Tuesday Weld's collateral relation, Assistant Attorney General William Weld.



WELD

12/17/90 Boston Globe

Richardson says he has discussed the matter with Weld "once or twice" and adds that he has never thought Weld was directly involved with the INSLAW case. He was, however, "astounded" by the lack of cooperation he received from OPI, which rebuffed his request 17 months after he made it, and long after Weld had left the department. Another lawyer involved in the case speculates that the INSLAW case "may well have crossed Weld's desk" – and may have contributed to his March 1988 decision to leave the department. "We know that Weld had numerous disagreements with Meese," this source says. "Perhaps this was one of them."

Preoccupied with scouring the Bay State for Republicans with public sector experience, the governor-elect declined to comment.

FEDERAL COMPUTER MARKET REPORT

Intelligence and Strategies for Executives in Government Procurement



January 28, 1991

Vol. 15 No. 2

PR (IN) IC-19

## JUSTICE APPEAL OF INSLAW RULING HEARD BY PANEL

### Hamilton Says Agency Now Basing Its Defense On 'String Of Technicalities'

The Justice Department appeal of an INSLAW Inc. suit charging that the agency intentionally stole the software company's proprietary product and then drove it into bankruptcy was just heard by a three-judge panel of the US Court of Appeals for the District of Columbia (see ***FCMR***, Dec. 24, pg. 1). The panel's ruling is expected within the next three months.

Justice Department officials declined to comment on the appeals court proceedings. But INSLAW President William Hamilton, in an ***FCMR*** interview, said agency attorneys gave up trying to argue that Justice did not steal the INSLAW software, as two lower courts have already found, but instead "tried to get off the hook on a string of technicalities."

Basically, Hamilton said Justice Department lawyers argued that INSLAW cannot sue the government for copying its software after the company declared bankruptcy -- an alleged violation of bankruptcy code protections. The Justice Department argued that it cannot be sued because it never waived its sovereign immunity by filing a formal claim as an INSLAW creditor -- "even though the agency had frequently boasted of its status as a creditor and had demanded the advantages of being a creditor in court."

The agency lawyers also reportedly argued that even if the INSLAW software was stolen, that action allegedly occurred in 1983 and the company did not declare bankruptcy until February 1985. Therefore, the Justice Department cannot be sued for violating bankruptcy protection rules because the alleged theft occurred before bankruptcy.

INSLAW attorneys countered by arguing that the Justice Department not only stole the software but continued to exercise control over it after INSLAW declared bankruptcy. "And in addition," Hamilton said, "it was pointed out that after our bankruptcy the Justice Department made 25 more illegal copies of the proprietary software."

PRINTEC-20



# NATION

MORE NATIONAL NEWS ON PAGE B5

# House probes firm's charge of bullying by Justice

By Jerry Seper
THE WASHINGTON TIMES

A House committee is investigating allegations that high-ranking Justice Department officials conspired to force a Washington-based computer company into bankruptcy as part of a plan to steal the firm's multimillion-dollar software program.

House Judiciary Committee investigators also are looking into allegations that the pirated software, known as Promis, has since been sold illegally to intelligence agencies in Iraq and Israel.

The alleged sales to the two foreign governments are described in an affidavit filed this week in U.S. District Court in Washington.

The affidavit, which includes the sworn statement of a former Israeli intelligence officer, also alleges that the software — developed in 1982 by Inslaw Inc. — has been sold illegally to the CIA, the Defense Intelligence Agency, the National Security Agency and the Royal Canadian Mounted Police.

Several current and former Justice officials are among those questioned by committee investigators during the past few weeks. According to law-enforcement officials, hundreds of pages of documents have been collected.

The committee can subpoena records and department officials and, ultimately, refer the matter to the full House for action.

Headed by Texas Democrat Jack Brooks, the committee is looking into allegations that Justice officials — including former Attorney General Edwin Meese III — conspired to force Inslaw into bankruptcy in order to deliver the firm's software to a rival company.

The rival firm, according to court records and law enforcement officials, was headed by Earl W. Brian, a former Cabinet officer under then-California Gov. Ronald Reagan and a longtime friend of several high-ranking GOP officials.

Mr. Meese served as a key aide to Mr. Reagan during the time Mr. Brian held the Cabinet post. In 1981, when Mr. Meese was appointed legal counsel to then-President Reagan, Mr. Brian went to the White House as chairman of a task force that reported to Mr. Meese.

During the Meese confirmation hearings in 1984, it was discovered that Mr. Brian once gave a $15,000 interest-free loan to Mr. Meese's wife, Ursula, and that she was an investor in a company, Biotech Capital Corp., headed by Mr. Brian.

Mr. Meese and Mr. Brian could not be reached last night for comment. They previously have denied any wrongdoing in the Inslaw matter.

The affidavit, filed by Inslaw, says Mr. Brian told Israeli intelligence officials in 1987 he had acquired the property rights to the Promis software and it was being used by a number of U.S. intelligence agencies. The affidavit said an Israeli sale was completed in 1987.

Ari Ben-Menashe, who said he worked as an Israeli intelligence officer for 12 years, said in the sworn statement Mr. Brian also claimed to have sold the software program to "Iraqi military intelligence." The alleged sale, he said, occurred in Santiago, Chile, in the offices of "a major supplier of the government of Iraq of weapons and munitions."

There is no information as to how the software may have been used.

The committee investigation also includes a look at ongoing Justice Department actions, ordered by Attorney General Dick Thornburgh, to stonewall a committee request for hundreds of secret internal documents describing the department's handling of the Inslaw contract.

Mr. Thornburgh has refused to turn over the documents, saying they are part of "litigation strategy" in the case and, as a result, are "shielded" from congressional scrutiny.

The dispute revolves around a $10 million contract awarded to Inslaw in March 1982 to provide the Promis software, described as a case-management program that gives U.S. Attorneys' Offices the ability to keep tabs on their cases.

According to Inslaw President William A. Hamilton, the company went bankrupt after Justice officials began withholding payments — a month after the department demanded a copy of the proprietary software.

In January 1988, U.S. Bankruptcy Judge George Bason Jr. found that Justice "took, converted and stole" the Inslaw software through "trickery, fraud and deceit." He ordered Inslaw to be paid $6.8 million in damages.

In November 1989, U.S. District Judge William B. Bryant upheld that ruling on appeal. The money has never been paid.

Litigation is continuing, with Inslaw asking for "limited discovery" to prove that the Promis software had been pirated, based on information from new sources. The matter is pending in U.S. District Court in Washington.

GOVERNMENT COMPUTER NEWS

THE NATIONAL NEWSPAPER OF GOVERNMENT COMPUTING

FEBRUARY 18, 1991
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PRTIN/IC-21

# Justice, Inslaw Continue Their Battle Over Promis

By Margaret M. Seaborn
GCN Staff

The Justice Department and Inslaw Inc. last month revisited their near 10-year-old dispute over rights to Promis, a case management software developed by the small Washington company.

Justice is appealing a federal court ruling that it stole 44 copies of Promis, the Prosecutors Management Information System, from Inslaw.

The U.S. Court of Appeals for the District of Columbia heard the first oral arguments in the appeal in January.

Justice attorneys argued the department could not have violated a 1985 court-ordered stay by disseminating the software to U.S. attorneys' offices. They say Justice took possession of the software two years before Inslaw Inc. filed for bankruptcy in 1985, triggering the automatic stay.

Justice could not have violated the stay in 1983, because the bankruptcy petition that prompted the stay was not filed until 1985, said Justice attorney Mark B. Stern. He said most of the accusations Inslaw made against Justice in the bankruptcy proceedings were actions taken before 1985.

"There is nothing in the bankruptcy code that would take the shield of the stay and turn it into a sword," Stern said.

But Inslaw maintains that Justice's dissemination of Promis is not a stay violation, but theft of company property. Inslaw attorney Michael Friedlander said Justice "wrongfully took" copies of an enhanced version of Promis.

Justice acknowledged in court documents that Inslaw had installed 21 copies of enhanced Promis in U.S. attorneys' offices by February 1985 and from 1985 to 1987 the department installed Promis in 23 more U.S. attorneys' offices.

The U.S. Bankruptcy Court ruled in 1987 that Justice officials had stolen from Inslaw the 44 copies of enhanced Promis. The court enjoined Justice from distributing Promis beyond those copies legitimately obtained through an original contract. Based on the bankruptcy court's findings, the U.S. District Court for the District of Columbia awarded Inslaw more than $6 million in 1988.

Justice is appealing U.S. District Court Judge William A. Bryant's 1989 affirmation of the bankruptcy court's ruling and so far has not paid Inslaw any of the court-awarded money.

The Justice-Inslaw debacle began in the early 1980s.

Justice awarded Inslaw a contract in 1982 to provide case management software to U.S. attorneys' offices. Justice canceled part of the contract in 1983 and stopped payments to Inslaw. Inslaw filed for bankruptcy in 1985.

Inslaw president William A. Hamilton has charged repeatedly that Justice tried to force Inslaw into bankruptcy and Promis into the public domain.

Stern said the appeal raises three questions: whether the government's continued use of Promis after Inslaw's bankruptcy violated the stay; whether Justice waived sovereign immunity; and whether the bankruptcy code section that awards damages to individuals for violations of an automatic stay applies to the government's payment of damages to corporations.

Stern said Justice cannot be held liable for monetary damages because it has sovereign immunity.

Inslaw attorney Michael Friedlander said the company sees the case differently. The issue, he said, is whether Promis is the property of Inslaw or Justice.

## Whose Property?

Friedlander said if the court determines Inslaw owns the copies of Promis, it should "require Justice to divest itself of the software."

"If you win on your merits, then they'll pay for it," said Judge A. Raymond Randolph, one of three circuit judges presiding over the appeal.

Friedlander said Justice "not only took possession, but did a lot more" by copying the software code and threatening to give it to the public. "The government exercised control over 20 copies they had and took possession of that by fraud."

He likened the scenario to stealing a cow owned by Inslaw and then claiming the right to continue to milk the stolen cow. "Even if the government had the right to use it, it did not have the right to copy it," Friedlander said.

Stern said there is no evidence Justice tried to give Promis to anyone outside of the U.S. attorneys' offices. He said Promis "is exactly the same property the day after the company claimed bankruptcy as the day before."

***Friedlander compared the case to stealing a cow and then claiming the right to milk it.***

ST. LOUIS POST-DISPATCH

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PR IN IC-22

# Stolen Software Scattered

## Affidavits Allege Sales To Iraqis And Israelis

By Phil Linsalata
Of the Post-Dispatch Staff
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Software that a federal bankruptcy judge says the Justice Department stole has been sold illegally to the governments of Israel and Iraq, according to documents filed Monday in federal court.

Canada is also illegally using the software in some 900 locations, the documents say.

The software, called Promis, was developed by Inslaw, a company based in Washington and owned by St. Louis natives William and Nancy Hamilton. It is used by law enforcement agencies to track cases and criminals.

The Hamiltons began a legal battle with the Justice Department eight years ago, when the agency stopped payment on a $10 million contract to modernize its case management.

The Hamiltons contended that their software was stolen by the U.S. government while Ronald Reagan was president. In a trial, Bankruptcy Judge George F. Bason Jr. found that

See SOFTWARE, Page 9

# Colorful Characters, Prized Product Lend Spice To Case

By Phil Linsalata
Of the Post-Dispatch Staff

Inslaw's case against the Department of Justice brings together a cast of colorful, diverse characters and a widely used software product.

This is a look at two of the leading characters.

### Ari Ben-Menashe

Ben-Menashe, 39, had a 12-year career with the Israeli government. During much of the 1980s, he traveled the world to arrange the purchase of weapons for resale in accordance with Israeli policies.

He says that shifting political winds brought a job change in 1987, when he began a two-year intelligence stint within the prime minister's office. He said that one of his last assignments there came in 1989 when he was asked to try to stop Carlos Cardoen's Chilean company from selling chemical arms to its main customer, Iraq.

"I failed," Ben-Menashe said of that mission.

Shortly after, he was indicted by the United States on charges of conspiring to sell transport planes to Iran. His trial in U.S. District Court in Manhattan ended in acquittal last year.

### Earl Brian

Brian is a businessman whose resume lists large stakes in Financial News Network and United Press International. His connection to Promis software was first alleged in court records in which William Hamilton and his wife, Nancy Hamilton, recalled an aggressive buyout offer from Hadron Inc., a subsidiary of Infotechnology, a holding company owned by Brian.

Brian's attorney, Larry Hirsch, said Monday that claims by the Hamiltons against his client had been "absolutely false," from the first court record to the last.

Brian's more distant past includes a close relationship with former president Ronald Reagan. When Reagan was governor of California, Brian served as secretary of Health and Welfare.

His political ties surfaced again after Reagan nominated Edwin Meese III as attorney general. The investigation of an independent counsel disclosed that Meese had failed to report his wife's investment in two companies controlled by Brian and had failed to report a $15,000 loan from a subordinate who was a close friend of Brian.

### Promis Software

Inslaw's Promis software is indispensable in law enforcement circles. The software is used by federal prosecutors, by the city of New York and by Cook County, Illinois.

"Promis can be used as a professional workflow tracking system," Hamilton said. "It can support any kind of investigative activity, including law-enforcement investigations and, evidently, intelligence-operations investigations."

# Software

From page one

Justice officials had stolen the software from the Hamiltons "through trickery, fraud and deceit."

Affidavits filed Monday suggest that the matter did not stop with the theft.

In one, former Israeli intelligence officer Ari Ben-Menashe said he was present when a close associate of Reagan peddled the software first to Israeli intelligence and later, through a middleman, to Iraqi intelligence.

The associate is Dr. Earl W. Brian, a principal of two financially troubled companies, United Press International and Financial News Network. Brian held a Cabinet-level position in California when Reagan was governor there.

When the Hamiltons' company was under financial pressure as a result of the dispute with the Justice Department, a company controlled by Brian offered to buy Inslaw. Hamilton refused, and the Justice Department mounted an effort to force Inslaw into liquidation, according to court records. The effort failed, and Inslaw is seeking damages from the government.

Ben-Menashe's affidavit, filed in U.S. Bankruptcy Court for the District of Columbia, states: "In January 1989, as a Special Consultant for Intelligence Affairs in the Israeli Prime Minister's Office, Ben-Menashe was told by Chilean arms manufacturer Carlos Cardoen that he had "brokered a deal" between Brian and "a representative of Iraqi Military Intelligence" for the use of the Promis computer software. The deal was consummated in Santiago, Chile, where Cardoen's company, Industrias Cardoen S.A., has its headquarters. Until recently, Iraq was that company's biggest customer.

■ In 1987, Ben-Menashe attended a meeting at the headquarters of the Israeli Defense Forces where Brian declared that the software was in use in the United States by the CIA, the National Security Agency, the Defense Intelligence Agency and the U.S. Department of Justice. Only the Justice Department is authorized by the court to use the software.

■ Brian, as a private businessman, said he had acquired the property rights to the software and consummated a sale to Israel in 1987, although he had allowed its use by the Israeli intelligence forces for as many as five years before the actual sale.

Reached Monday at his home in Oxford, Md., Brian called the allegations "nonsense." He said he had never been to Santiago or Tel Aviv and did not know of Cardoen or Ben-Menashe. He said that until reading press accounts, he had never heard of the Hamiltons, Inslaw or Promis software.

Cardoen's attorney in the United States, Abbey Kaplan of Miami, said Ben-Menashe's affidavit "sounds like misinformation, designed to have people go in one direction in order to serve someone's purpose."

A second affidavit charges that the Canadian federal government is using Promis in 900 unauthorized installations, all within a single agency.

This surfaced after an arm of the Canadian government surveyed all federal offices to develop an inventory of software and whether it could function in both French and English. The survey found Inslaw's Promis software, and the survey team then questioned the Hamiltons as to whether it could support use in French.

To learn more, the Hamiltons sent their daughter, Patricia Hamilton, an Inslaw sales representative, to Montreal. In an affidavit filed Monday, she said that Canadian officials confirmed that the software was in use there. But the survey records do not show which agency has the software. Nor do they show who provided it.

Dennis Lachance, manager of the bilingual research project, confirmed in a telephone interview Monday the use of Promis. He said he was working to trace the use to a specific agency.

William Hamilton said the affidavits filed Monday explained the "desperate efforts" of Attorney General Richard Thornburgh and his predecessor, Edwin Meese, to deny the validity of court rulings favorable to Inslaw.

"The new evidence," Hamilton said, "strongly suggests that the U.S. Government not only stole Inslaw's Promis software for its own use in law enforcement and intelligence agencies, but also was involved in the sale of the software to foreign governments."

Although the Hamiltons won in trial before the bankruptcy court and were upheld on appeal in U.S. District Court, the Justice Department has appealed anew before the U.S. Court of Appeals.

During this process, a court-ordered stay bars the Justice Department's use or distribution of the Promis software beyond the offices where the software was in use when the dispute first arose.

The affidavits filed Monday were in support of a brief seeking new subpoena powers to gather evidence in support of the Hamiltons' claim that the Justice Department has violated the stay by distributing the software.

As the Hamiltons press their case in the courts, the Judiciary Committee of the House of Representatives is investigating the case in preparation for future hearings.

Among those deposed is Charles Hayes, operator of a government-materials salvage company in a rural area near Nancy, Ky. In a recent interview, Hayes said he told the Judiciary investigators that Canada and Israel had the software.

Hayes said he told the investigators that he had learned of Israeli possession from sources in the Mossad, an Israeli intelligence agency.

Hayes said that while under oath, he told the investigators that the software had been given to Canada by an individual "high in the Justice Department."

Hamilton said that sources had told him of more than a dozen foreign governments that got Promis through people connected with the U.S. government.

The Washington Times

THURSDAY, FEBRUARY 21, 1991 ** WASHINGTON, D.C.

# House probes firm's charge of bullying by Justice

PRIN/IC-23

By Jerry Seper
THE WASHINGTON TIMES

A House committee is investigating allegations that high-ranking Justice Department officials conspired to force a Washington-based computer company into bankruptcy as part of a plan to steal the firm's multimillion-dollar software program.

House Judiciary Committee investigators also are looking into allegations that the pirated software, known as Promis, has since been sold illegally to intelligence agencies in Iraq and Israel.

The alleged sales to the two foreign governments are described in an affidavit filed this week in U.S. District Court in Washington.

The affidavit, which includes the sworn statement of a former Israeli intelligence officer, also alleges that the software — developed in 1982 by Inslaw Inc. — has been sold illegally to the CIA, the Defense Intelligence Agency, the National Security Agency and the Royal Canadian Mounted Police.

Several current and former Justice officials are among those questioned by committee investigators during the past few weeks. According to law-enforcement officials, hundreds of pages of documents have been collected.

The committee can subpoena records and department officials and, ultimately, refer the matter to the full House for action.

Headed by Texas Democrat Jack Brooks, the committee is looking into allegations that Justice officials — including former Attorney General Edwin Meese III — conspired to force Inslaw into bankruptcy in order to deliver the firm's software to a rival company.

The rival firm, according to court records and law enforcement officials, was headed by Earl W. Brian, a former Cabinet officer under then-California Gov. Ronald Reagan and a longtime friend of several high-ranking GOP officials.

Mr. Meese served as a key aide to Mr. Reagan during the time Mr. Brian held the Cabinet post. In 1981, when Mr. Meese was appointed legal counsel to then-President Reagan, Mr. Brian went to the White House as chairman of a task force that reported to Mr. Meese.

During the Meese confirmation hearings in 1984, it was discovered that Mr. Brian once gave a $15,000 interest-free loan to Mr. Meese's wife, Ursula, and that she was an investor in a company, Biotech Capital Corp., headed by Mr. Brian.

Mr. Meese and Mr. Brian could not be reached last night for comment. They previously have denied any wrongdoing in the Inslaw matter.

The affidavit, filed by Inslaw, says Mr. Brian told Israeli intelligence officials in 1987 he had acquired the property rights to the Promis software and it was being used by a number of U.S. intelligence agencies. The affidavit said an Israeli sale was completed in 1987.

Ari Ben-Menashe, who said he worked as an Israeli intelligence officer for 12 years, said in the sworn statement Mr. Brian also claimed to have sold the software program to "Iraqi military intelligence." The alleged sale, he said, occurred in Santiago, Chile, in the offices of "a major supplier of the government of Iraq of weapons and munitions."

There is no information as to how the software may have been used.

The committee investigation also includes a look at ongoing Justice Department actions, ordered by Attorney General Dick Thornburgh, to stonewall a committee request for hundreds of secret internal documents describing the department's handling of the Inslaw contract.

Mr. Thornburgh has refused to turn over the documents, saying they are part of "litigation strategy" in the case and, as a result, are "shielded" from congressional scrutiny.

The dispute revolves around a $10 million contract awarded to Inslaw in March 1982 to provide the Promis software, described as a case-management program that gives U.S. Attorneys' Offices the ability to keep tabs on their cases.

According to Inslaw President William A. Hamilton, the company went bankrupt after Justice officials began withholding payments — a month after the department demanded a copy of the proprietary software.

In January 1988, U.S. Bankruptcy Judge George Bason Jr. found that Justice "took, converted and stole" the Inslaw software through "trickery, fraud and deceit." He ordered Inslaw to be paid $6.8 million in damages.

In November 1989, U.S. District Judge William B. Bryant upheld that ruling on appeal. The money has never been paid.

Litigation is continuing, with Inslaw asking for "limited discovery" to prove that the Promis software had been pirated, based on information from new sources. The matter is pending in U.S. District Court in Washington.

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# Inslaw charges pirated software was sold to Israel and Canada

## *Infotechnology chief calls accusation 'a tissue of lies'*

PRTIWIIC-24

By MARK PAWLOKSY

Officials of Inslaw Inc. believe the Canadian and Israeli governments are using pirated copies of proprietary case management software the firm initially developed for and then later accused the U.S. Department of Justice of trying to steal.

The charges come in affidavits filed in Inslaw's bankruptcy case in the District of Columbia. As intriguing as the new charges are, however, they are not without their flaws.

One of the affidavits alleges the Israeli government purchased the software from Earl W. Brian, the head of Infotechnology Inc. The court documents state the company does not know how the software got into the hands of the Canadians.

Brian, who also controls locally based Hadron Inc. and United Press International, responded with his own affidavit, calling the claims "a tissue of lies."

The charges against Brian are leveled by Ari Ben-Menashe, who claims to be a former Israeli intelligence agent. Ben-Menashe said he attended a meeting in Tel Aviv in 1987 where Brian made a presentation of the software, known as Promis, to government officials.

Brian's affidavit states he has never been to Tel Aviv, does not know a Ben-Menashe and had never heard of Inslaw or Promis before recent press accounts about the company's dispute with the Justice Department.

Inslaw's president Bill Hamilton has been in a legal fight with the U.S. government over the software for eight years. A bankruptcy judge in 1987 ruled the government tried to steal the software from Inslaw and force the company out of business. The judge, who was not reappointed to the bench after the ruling, awarded the Hamiltons a multimillion dollar judgment. The government appealed the judgment, lost, and now is appealing to the U.S. Court of Appeals.

Hamilton contends the government wanted him out of the way so his government contract and software could be handed over to Brian, a longtime friend of former U.S. Attorney General Edwin Meese. Hamilton has alleged a close business associate of Brian's approached him about buying Inslaw, and when his offer was rebuffed, threatened to force the company out of business.

Inslaw's second affidavit filed last week is the sworn testimony of Patricia Hamilton, the Hamiltons' daughter who works for Inslaw. Her affidavit states that, according to Canadian officials, Promis software is widely used throughout the federal government in Canada.

Bill Hamilton said Inslaw has sold the software to provincial governments in Canada, but not to the federal government.

Denis LaChance, research project manager for the Department of Communications in Montreal, confirmed Promis software is used in the government. However, it's unclear, LeChance said, if the Promis software federal agencies are using is Inslaw's software.

LaChance said people may be confusing the Inslaw Promis with Promis Systems Corporations Ltd., a Toronto-based computer firm that also manufactures software.

"What we're trying to do now is find out which product is being used here in Canada," LaChance said. A spokesman for the Toronto company was not available for comment by presstime.

Hamilton claims independent sources have told him the software in use in Canada is Inslaw's.

The affidavit by the Israeli Ben-Menashe also claims Brian brokered a deal in which the Iraqi military purchased the Promis software. Brian, in his affidavit, denies the charge.

Ben-Menashe, though not a well-known name in Washington business circles, has gotten some press in other areas because of his ties to arms exporters. In December a New York federal court found him not guilty of charges he conspired to violate U.S. arms-export laws.

Ben-Menashe's affidavit fails to reveal the dates, or times he is alleged to have met with Brian or who else was present at the meetings, and in a telephone interview last week from his home in Lexington, Ky., he declined to elaborate.

Ben-Menashe also said he met Brian in 1980 in Washington, D.C. When asked to describe Brian, Ben-Menashe called Brian an average man, "under 6 feet tall, and not overweight. There's nothing special about him. He's a normal human."

In fact, Brian is well over 6-feet 2-inches tall and weighs more than 250 pounds, according to people who know him.

"He is an imposing figure," said one person who asked not to be named. "You would not forget him if you ever met him." Said another source, "He's big."

# Government Denies Theft Of Software

By Phil Linsalata
Of the Post-Dispatch Staff

The U.S. Department of Justice has denied charges by a computer software developer that the department was involved in the delivery of stolen computer software to Israel, Iraq or Canada.

The denials were part of pleadings filed in U.S. Bankruptcy Court in Washington.

The Justice Department and Inslaw, the Washington-based software developer, have been involved in an eight-year court fight surrounding a $10 million software contract between Inslaw and the Justice Department. The dispute has resulted in one court ruling that the Justice Department had stopped payment and stolen the software through "trickery, fraud and deceit."

Inslaw, owned by St. Louisans William and Nancy Hamilton, asked the court last week for permission to resume investigating whether the Justice Department sold its software to the governments of Iraq, Israel and Canada, in violation of court orders. The software, called Promis, is designed to track legal cases and defendants; it also has counter-terrorist, intelligence and national security uses, William Hamilton said.

The Justice Department said it was opposed to Inslaw's request for renewed investigative authority. Inslaw's court document fails to show that Iraq, Israel or Canada got the software from within the Justice Department, the department's response said.

"Anyone currently holding the Promis software could have obtained it from Inslaw, from any one of a dozen state and local governments, or from one of Inslaw's non-government clients," the department's legal brief says.

The brief sought to discredit a sworn statement that former Israeli intelligence officer Ari Ben-Menashe filed last week in support of the Hamiltons' request. Ben-Menashe said in the statement that he had witnessed a presentation of the software to Israeli intelligence officials in Tel Aviv by Dr. Earl W. Brian. Ben-Menashe's statement also says Carlos Cardoen, an arms manufacturer in Santiago, Chile, told Ben-Menashe that Brian had sold the software to Iraqi military intelligence forces.

Brian is a principal in Infotechnology Inc. and has had financial dealings with former U.S. Attorney Edwin Meese III. At one point during Inslaw's dispute with the Justice Department, a company controlled by Infotechnology made an aggressive offer to buy Inslaw, court records show.

The Justice Department's brief is accompanied by a sworn statement filed by Brian. In it, Brian claims he has never been in Santiago or Tel Aviv, and had nothing to do with the transfer of the computer program to Israel or Chile. He called Ben-Menashe's claims "a tissue of lies."

The brief also attacks the credibility of Ben-Menashe, acquitted late last year of a federal charge that he conspired in 1989 to sell to Iran transport planes owned by Israel.

On the issue of Canada's possession of the software, the Justice Department suggests that the Hamiltons await an answer to their inquiries in Canada instead of asking for court authority here to subpoena and depose witnesses.

PR IN IC-25

FINAL EDITION

# The Miami Herald

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FRIDAY, MARCH 15, 1991

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PRTIN/IC-26

# Justice Department perverts justice in Inslaw case

**JAMES J. KILPATRICK**

IN THE MATTER of the Department of Justice and the Inslaw case, a remarkable thing is happening: The stench gets worse. Until recently, it could be said of this shameful affair that it smelled only to high heaven. It is now beginning to smell to outer space.

More in puzzlement than in anger, one has to ask: What has got into Dick Thornburgh? As Attorney General, he ought to be doing his damndest to get to the bottom of this disgraceful matter. Instead, he has stalled; he has stonewalled; he has taken refuge in legalisms; he has obstructed efforts of two congressional committees to dig out the facts. And this isn't even his scandal. He inherited the mess from Ed Meese.

The Inslaw case goes back to 1981. William Hamilton, an acknowledged whizbang inventor and developer of computer software, was then working for the old Institute for Law and Social Research (hence "Inslaw"). He came up with an idea for a program that would manage the heavy caseload of a law-enforcement agency.

Once in private employment, he began to develop his idea. He refined it, improved it, named it PROMIS, and in 1982 sold it to the Department of Justice for use in 42 U.S. attorneys' offices. It was a $10-million contract, and it put his tiny firm on the map of software suppliers.

Then everything came crashing down. The program itself worked superbly, but inexplicably the Department withheld payments that were due to Inslaw on the contract. The effect was to drive Inslaw into bankruptcy. Later it transpired that the Department official at the top of the PROMIS contract formerly had been employed — and fired — by Hamilton.

After months of hearings, U.S. Bankruptcy Judge George F. Bason came to a stunning conclusion: The Department of Justice, that citadel of integrity, had "stolen" Hamilton's invention. Judge Bason entered an injunction against the Department. He fixed the Government's bill for damages at $6.8 million. Bankruptcy judges serve 14-year terms, but the recommendation of the Attorney General weighs heavily in their reappointment. Judge Bason was not reappointed.

Somewhat embarrassed, but not really discomfited, the Department appealed. Judge Bason, the Department confidently implied, was a nobody. His decision surely would be reversed on appeal. Unh-hunh. U.S. District Judge William B. Bryant ringingly affirmed Judge Bason's findings. Instead of yielding, the Department took a further appeal. That appeal is still pending. Department lawyers are doing everything that they can think of to prolong the process.

Two years ago, the Senate's permanent subcommittee on investigations got curious and tried to find out what was going on. The Department of Justice stonewalled the committee so effectively that the investigators turned in a limp report and gave up.

This past December, a House judiciary subcommittee held a day of hearings on the Inslaw case. Investigators sought cooperation from Thornburgh. Again he stonewalled. He said that his testimony might jeopardize the Department's legal strategy.

A few weeks ago, the plots thickened. Hamilton learned by accident that his PROMIS software had been illegally sold to agencies of the Canadian government. He identifies the pirates as cronies of former Attorney General Ed Meese and former President Reagan. The cronies deny everything.

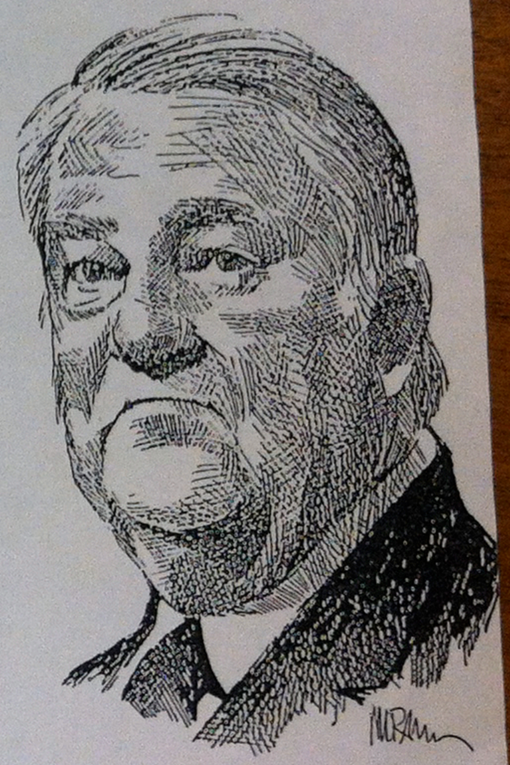
No sooner had the piracy been confirmed in Canada than an Israeli intelligence officer alleged that PROMIS was being used illegally by the CIA and other U.S. intelligence agencies. The spooks will not comment.

There is more. The case began before Bankruptcy Judge Bason. After he lost his position, the case went to another bankruptcy judge — Martin Teel. He disqualified himself. Then it went to Bankruptcy Judge Paul H. Mannes. He disqualified himself. In 1989 the matter went to Bankruptcy Judge James Schneider. On Feb. 26 he issued a mystifying order: "The undersigned bankruptcy judge hereby recuses himself from all further proceedings in this case due to potential conflicts relating to decisions yet to be rendered."

Last November Chief District Judge Aubrey Robinson held a hearing. In response to a suggestion that the case be referred to a bankruptcy judge in Alexandria, Va., he learned "they wouldn't touch it with a 10-foot pole." In fact, he said, "nobody wants to touch the case."

As I said, the stench gets worse. To my knowledge, Dick Thornburgh is a good man — but in the Inslaw case, he is a good man with a strong nose.

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It started under Ed Meese

LEGAL TIMES
LAW AND LOBBYING IN THE NATION'S CAPITAL
WEEK OF MARCH 18, 1991 • VOL. XIII, NO. 42 • $3.00



PR/IW/IC-27

Rep. Brooks Turns Up the Heat

# For Justice Dept., Inslaw Case Won't Go Away

BY GREG RUSHFORD

The messy Inslaw procurement scandal, which embarrassed the Justice Department in the 1980s when Edwin Meese III was attorney general, just won't go away.

Now, with Meese comfortably ensconced at the Heritage Foundation, it is Attorney General Richard Thornburgh and several key department careerists who are drawing the unfriendly fire.

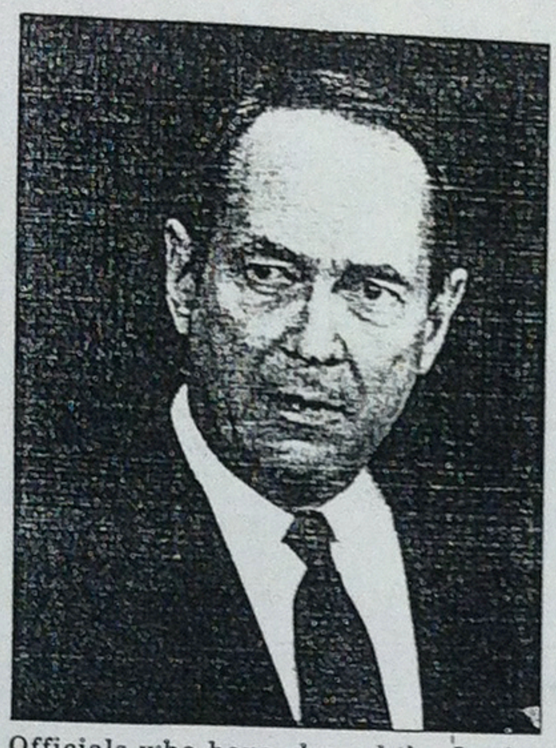
Unfortunately for Thornburgh, the chief congressional overseer of the Justice Department, House Judiciary Committee Chairman Jack Brooks (D-Texas), also happens to be Congress' top expert on the government's computer procurement practices.

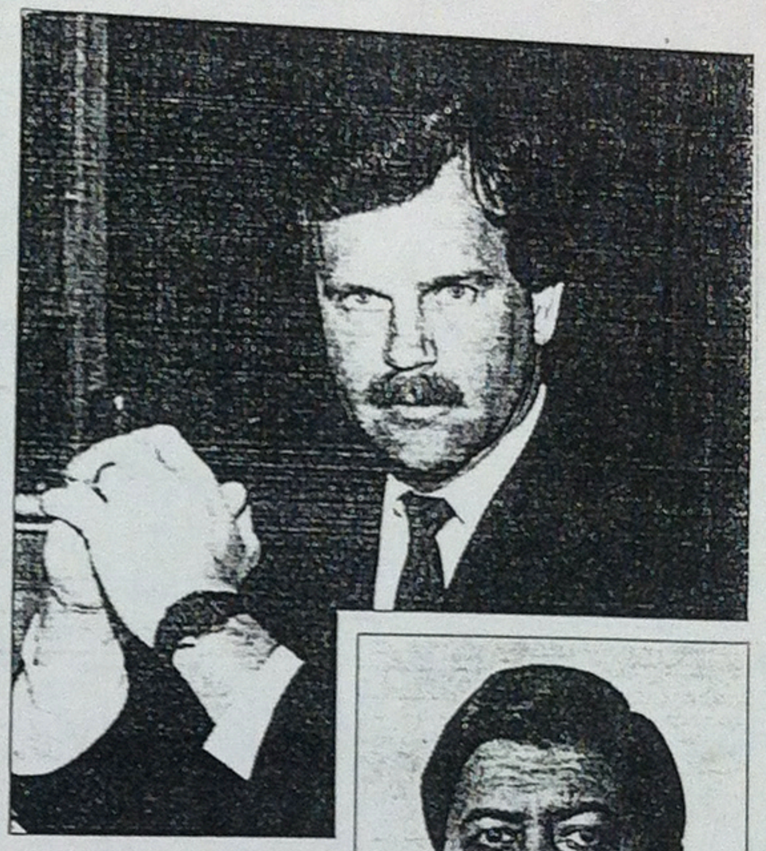
Brooks' long-running investigation of the Inslaw affair has entered a critical stage, with the Justice Department ready to turn over internal documents withheld from every other Inslaw probe. If Brooks finds evidence of official wrongdoing, Thornburgh and several top Justice officials—who cleared the department in their own probes—could find themselves in hot political waters.

Among the officials who have previously looked into the Inslaw case only to clear the department are Jay Stephens, U.S. attorney for the District of Columbia, who investigated the matter when he worked at main Justice under Meese; Gerald McDowell, chief of the Criminal Division's Public Integrity Section; Michael Shaheen Jr., counsel to the internal watchdog unit, the Office of Professional Responsibility; and Lawrence McWhorter, who heads the Executive Office of U.S. Attorneys in the Criminal Division.

Inslaw is the D.C.-based computer company whose case management software, PROMIS, was stolen by Justice Department officials with "trickery, fraud, and deceit," according to a 1988 opinion by then U.S. Bankruptcy Judge George Bason.

Bason's findings were upheld in November 1989 by Senior Judge William Bryant of the U.S. District Court for the District of Columbia. The department's appeal is pending before the U.S. Court of Appeals for the D.C. Circuit. Inslaw had sued the department in 1986, claiming it was driven into bankruptcy because officials improperly appropriated its software.





Officials who have cleared the Justice Department on Inslaw include (from left) Attorney General Richard Thornburgh, U.S. Attorney Jay Stephens, and department watchdog Michael Shaheen Jr.

Since last summer, Rep. Brooks has been pressing the Justice Department for more than 200 departmental documents collected together for litigation arising out of the Inslaw matter. Thornburgh has refused to turn over the documents, calling them "litigation-sensitive." The attorney general's recalcitrance has helped poison the atmosphere between the Justice Department and the feisty Brooks, a strong defender of congressional prerogatives.

Neither Brooks nor Justice Department officials, including Thornburgh, would comment directly on recent negotiations over the disputed documents. But Thornburgh—mindful that the Judiciary Committee controls his department's purse strings—seems ready to give Brooks what he has asked for, according to a Justice Department official.

Brooks has said that the disputed documents "may prove the department's innocence or guilt." He reports through an aide that he expects to obtain the papers soon.

The Brooks investigation has two main thrusts. The first—of which Inslaw is only a part—focuses on general criticisms that the Justice Department is ill-prepared to manage the $2.5 billion it plans to spend on computer hardware and software in the next five years.

The second concerns the original allegations of wrongdoing brought by Inslaw during Meese's tenure, plus the wave of internal probes continuing into the Thornburgh regime that found nothing amiss.

So far, the only congressional hearing stemming from Brooks' probe came last December. There, Inslaw's lawyers, Charles Work and Elliot Richardson, renewed their complaint that Thornburgh's

SEE INSLAW, PAGE 16



# Inslaw Scandal Continues to Dog Justice Officials

INSLAW FROM PAGE 4

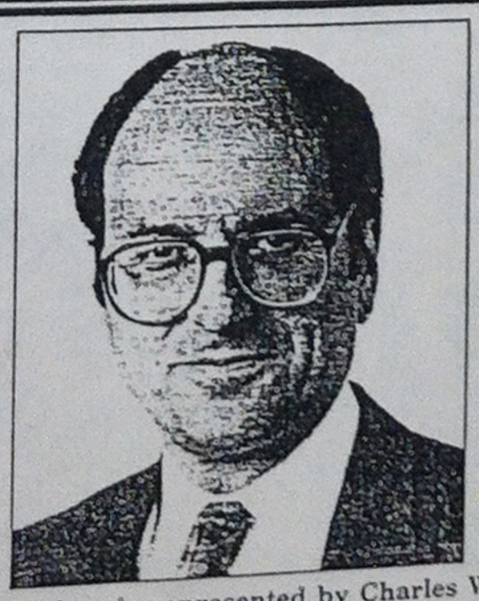
administration was unwilling to investigate the wrongs that Judges Bason and Bryant found had been done to Inslaw.

Work is the managing partner of the D.C. office of Chicago's McDermott, Will & Emory; former Attorney General Richardson is a partner in the D.C. office of New York's Milbank, Tweed, Hadley & McCloy.

Brooks convened the Dec. 5 hearing to air his own complaint that Thornburgh was refusing to turn over the hundreds of internal Justice documents to committee investigators, despite the attorney general's earlier promise of full cooperation.

While Brooks is keeping his own counsel about what he thinks his Inslaw investigation is likely to conclude, the Texas Democrat has been quite vocal about the area he knows best, the Justice Department's computer purchases.

According to testimony at the December hearing, the Justice Department has managed to botch things up fairly well. Milton Socolar, a high-ranking official at the General Accounting Office, testified that the department's computer modernization program was plagued by "poor management."





Inslaw is represented by Charles Work of McDermott, Will (left) and former Attorney General Elliot Richardson of Milbank, Tweed.

Socolar said conditions were so bad that the department cannot even ensure that its computers have adequate security to protect the names of informants and undercover agents.

"There is a lot of sensitive data within the Department of Justice computer files that is not secure," Socolar testified.

As to Inslaw, Brooks' investigation seems pointed in the direction of the conclusions reached by Judges Bason and Bryant: that Meese-era officials conspired to steal the Inslaw software.

Many of these officials—including former Deputy Attorney General D. Lowell Jensen, now a federal district judge in the Northern District of California—are long gone from Washington. But several department careerists, including McDowell

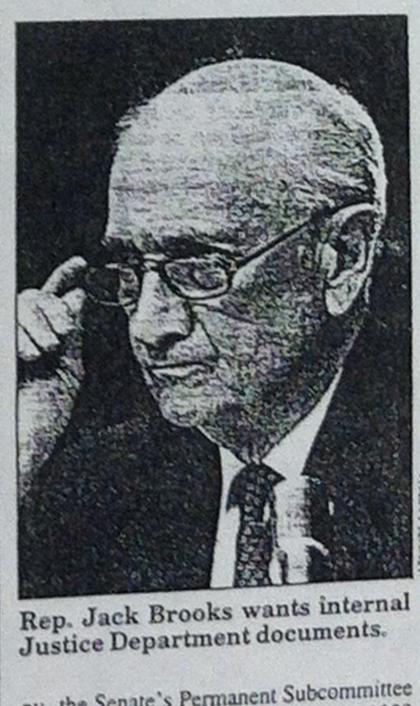
### Rumors of Wrongdoing

Farther afield, Brooks is also looking into two contradictory sworn statements given by Cornelius Blackshear, now a U.S. bankruptcy judge in the Southern District of New York.

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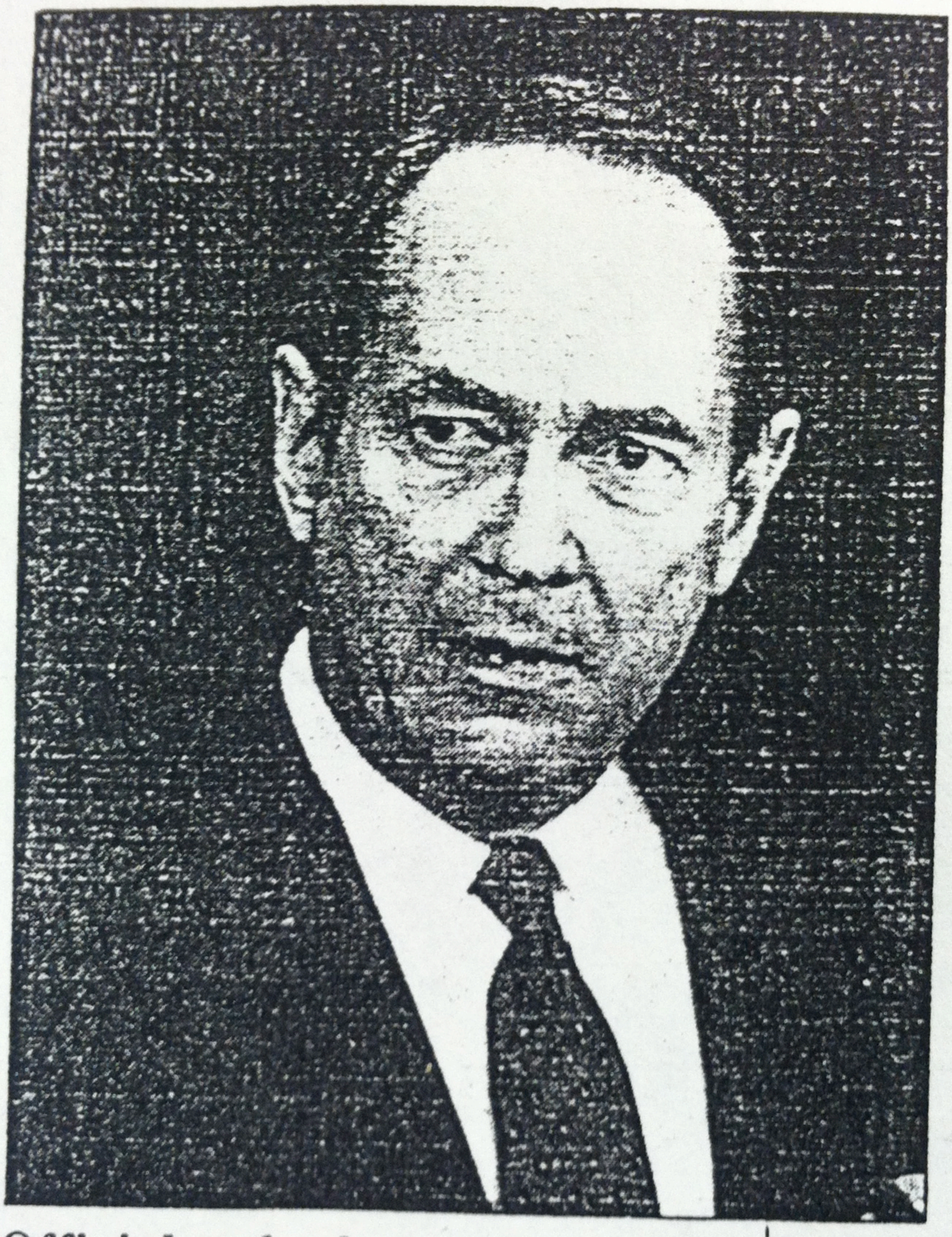
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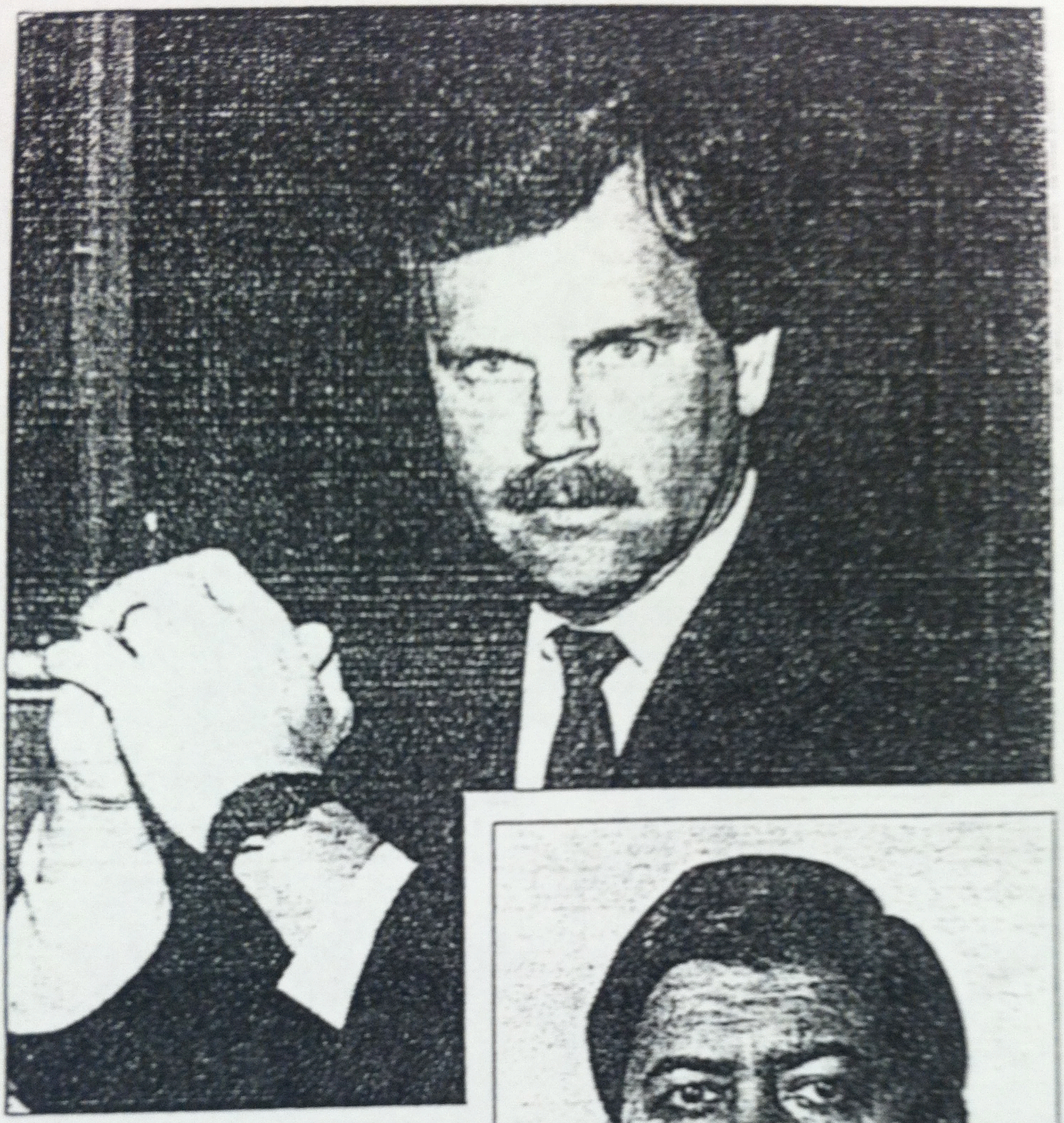
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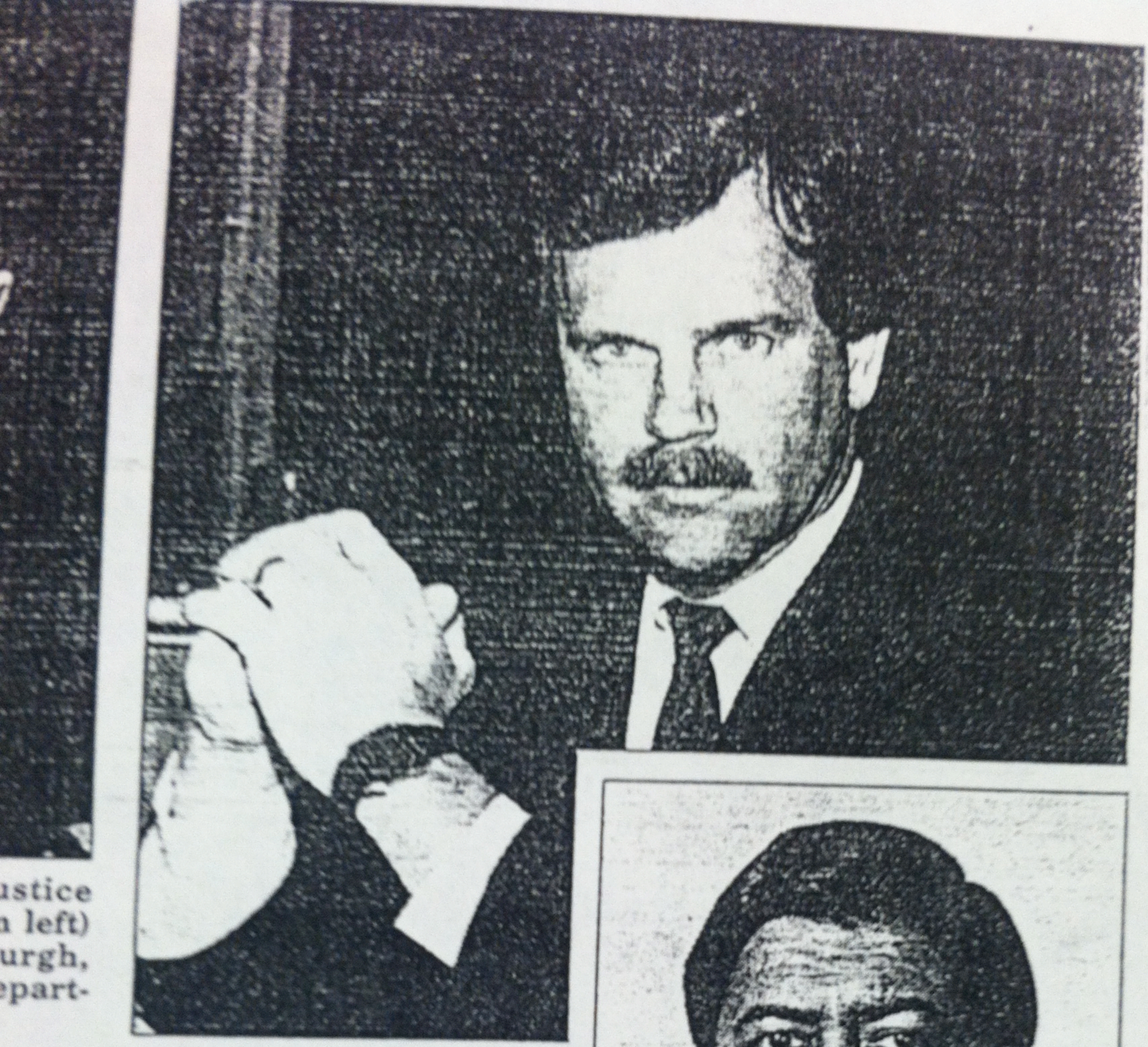
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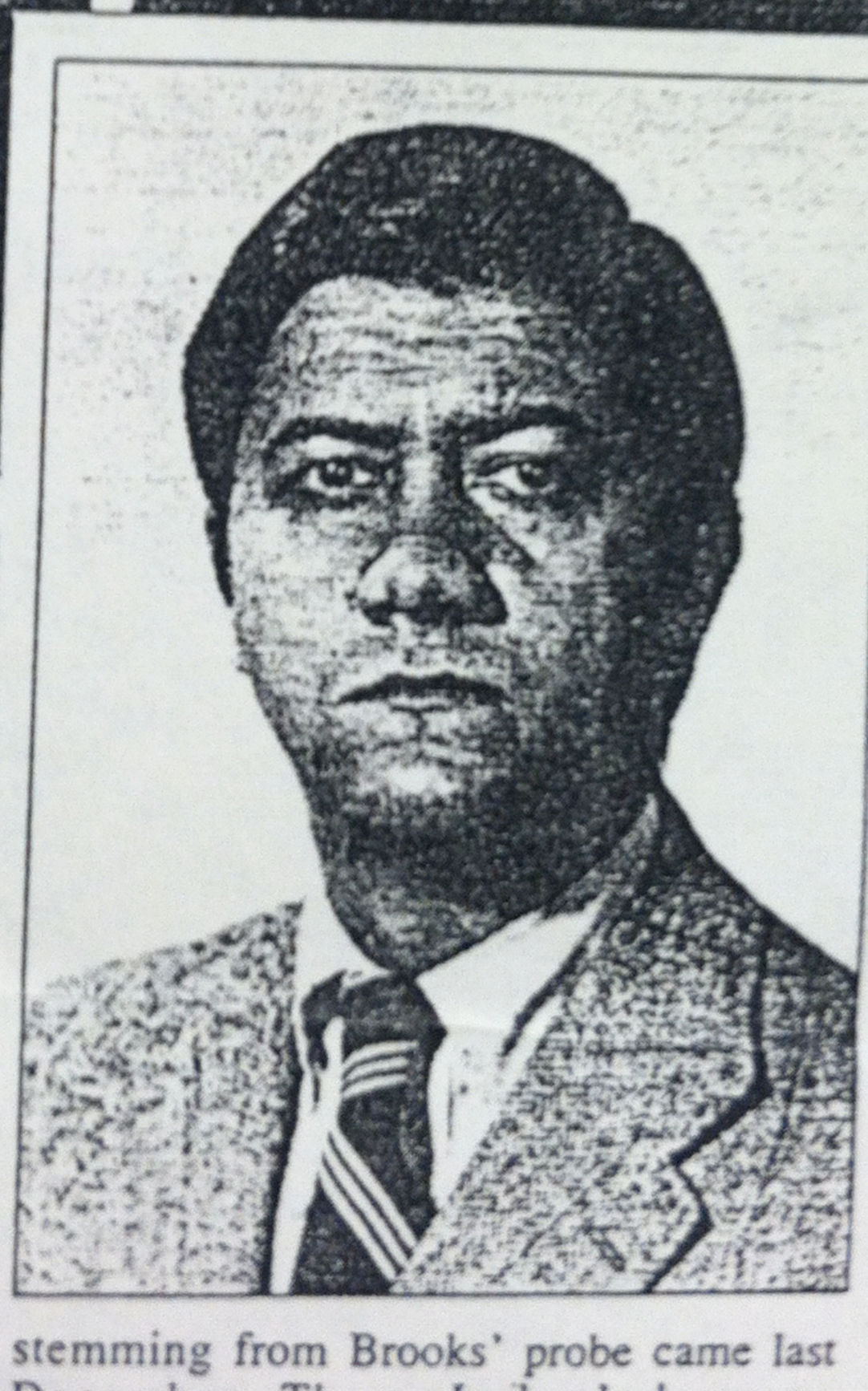
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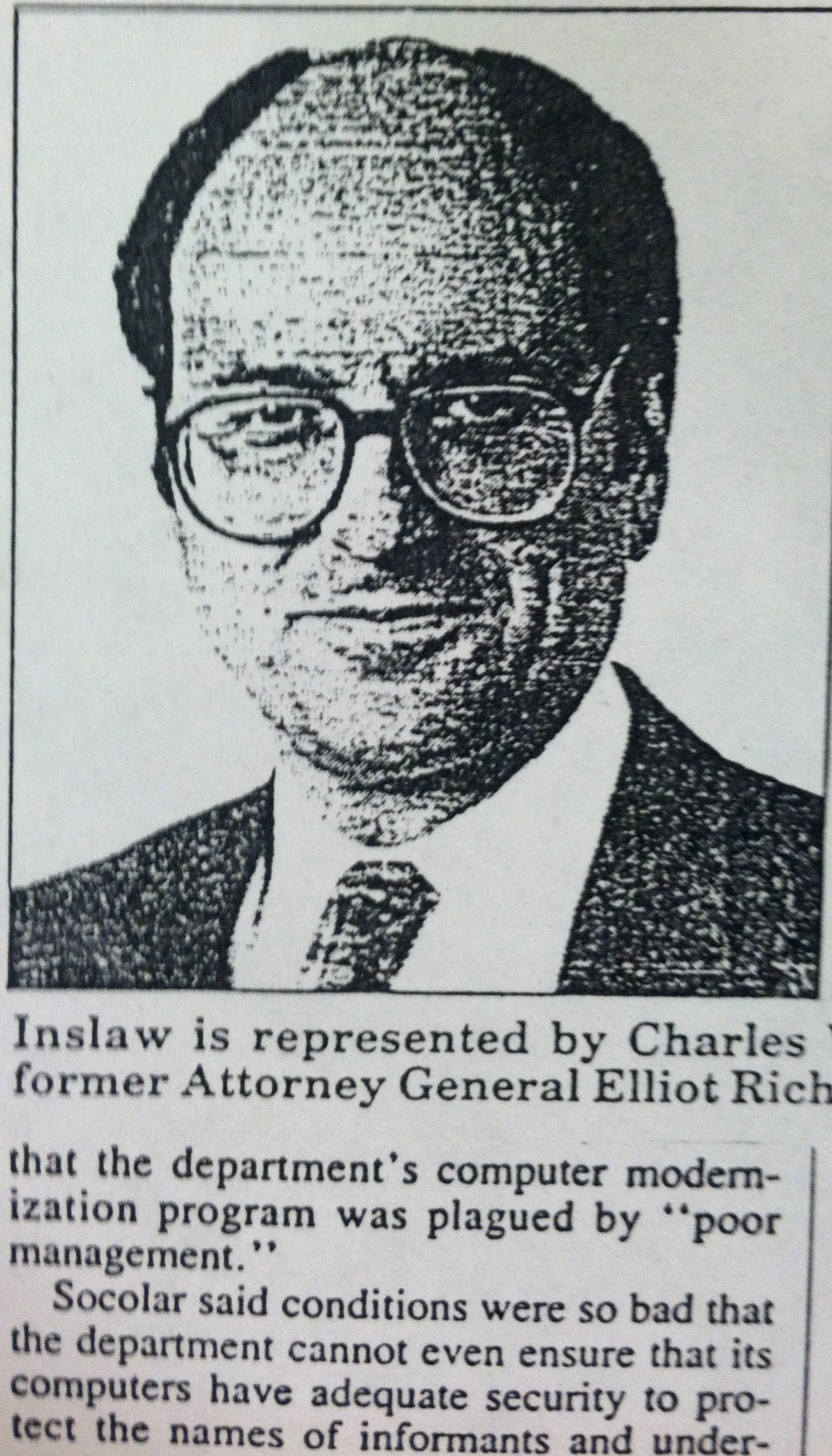


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SEE INSLAW, PAGE 16

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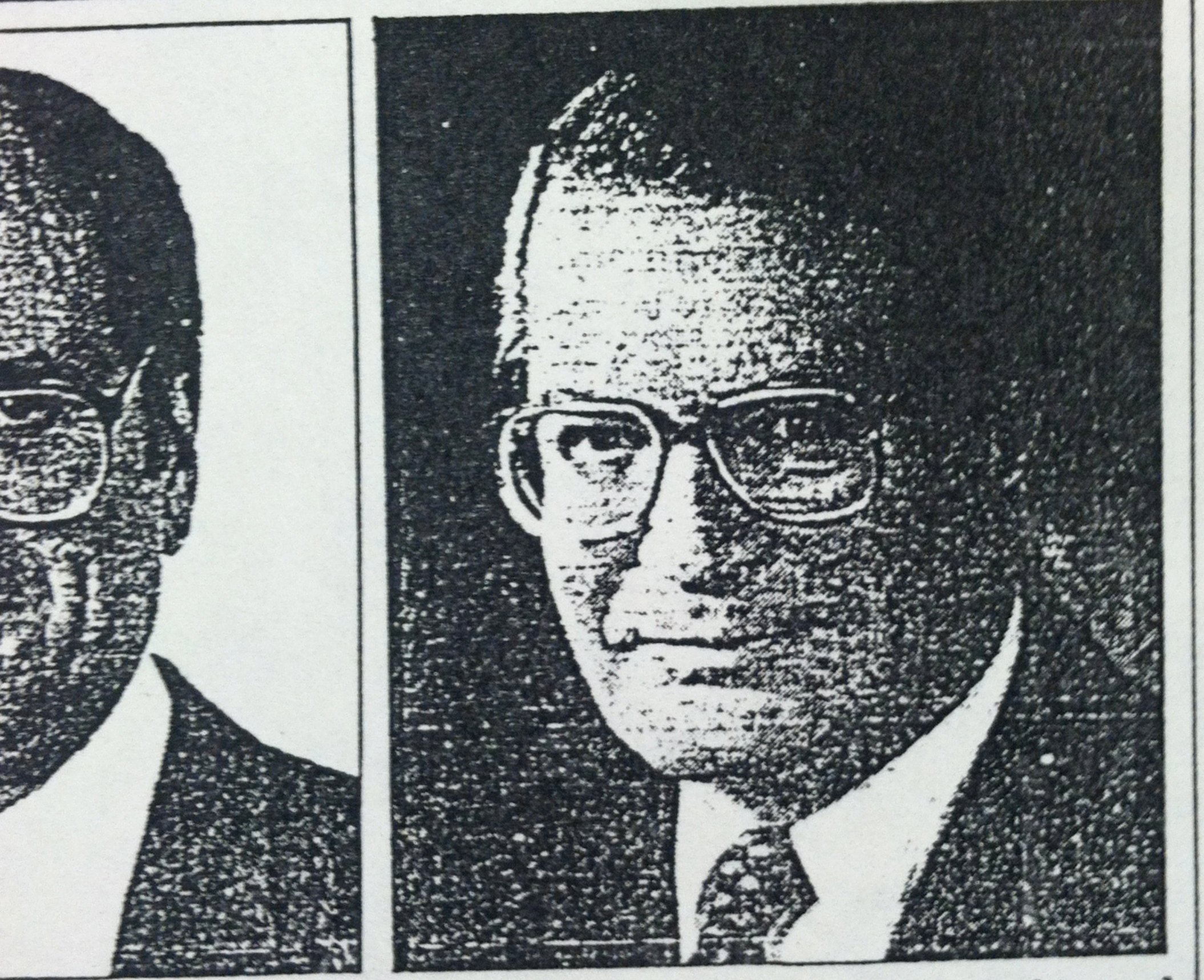
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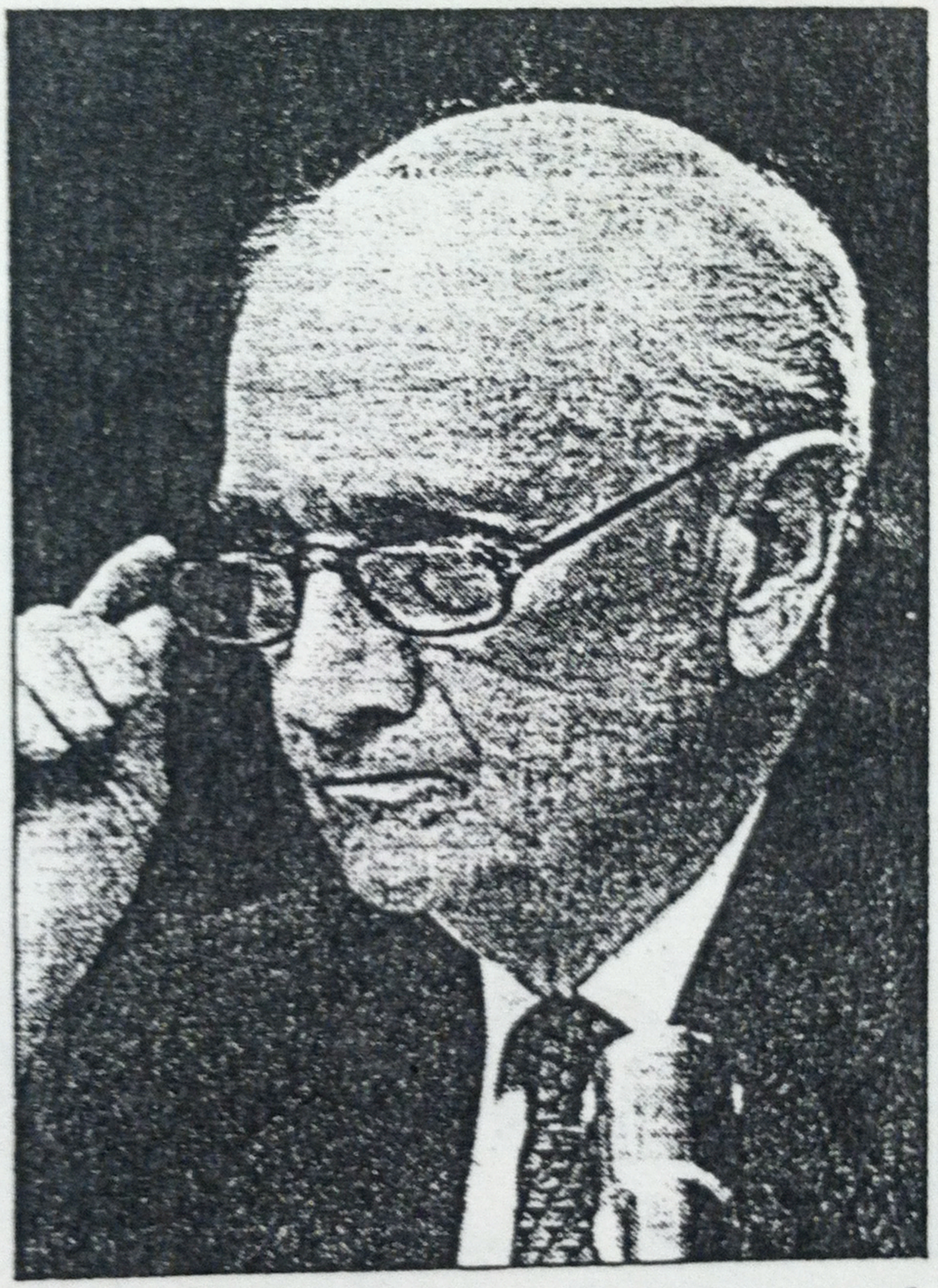
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# Inslaw Scandal Continues to Dog Justice Officials

INSLAW FROM PAGE 4

administration was unwilling to investigate the wrongs that Judges Bason and Bryant found had been done to Inslaw.

Work is the managing partner of the D.C. office of Chicago's McDermott, Will & Emory; former Attorney General Richardson is a partner in the D.C. office of New York's Milbank, Tweed, Hadley & McCloy.

Brooks convened the Dec. 5 hearing to air his own complaint that Thornburgh was refusing to turn over the hundreds of internal Justice documents to committee investigators, despite the attorney general's earlier promise of full cooperation.

While Brooks is keeping his own counsel about what he thinks his Inslaw investigation is likely to conclude, the Texas Democrat has been quite vocal about the area he knows best, the Justice Department's computer purchases.

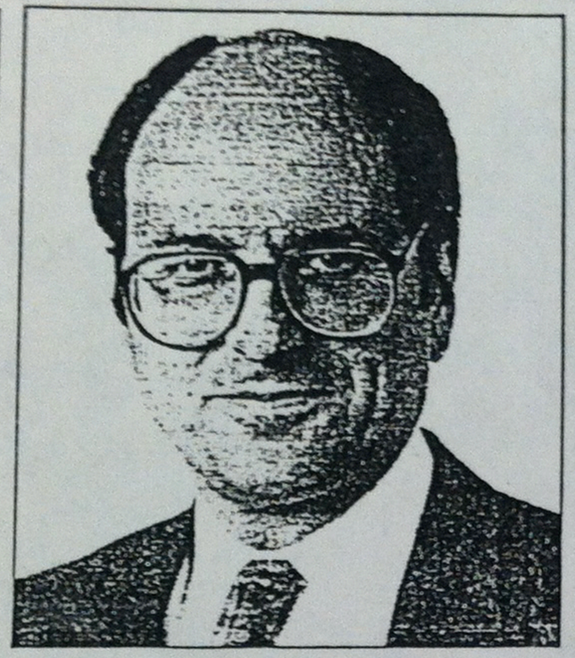
According to testimony at the December hearing, the Justice Department has managed to botch things up fairly well. Milton Socolar, a high-ranking official at the General Accounting Office, testified that the department's computer modernization program was plagued by "poor management."

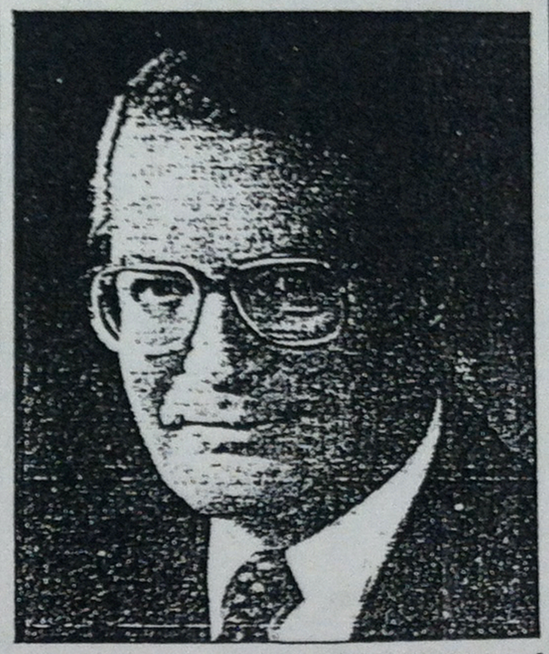
Socolar said conditions were so bad that the department cannot even ensure that its computers have adequate security to protect the names of informants and undercover agents.

"There is a lot of sensitive data within the Department of Justice computer files that is not secure," Socolar testified.

As to Inslaw, Brooks' investigation seems pointed in the direction of the conclusions reached by Judges Bason and Bryant: that Meese-era officials conspired to steal the Inslaw software.

Many of these officials—including former Deputy Attorney General D. Lowell Jensen, now a federal district judge in the Northern District of California—are long gone from Washington. But several department careerists, including McDowell of the Public Integrity Section and McWhorter of the Executive Office of U.S. Attorneys, have a lot riding on Brooks not finding any wrongdoing.





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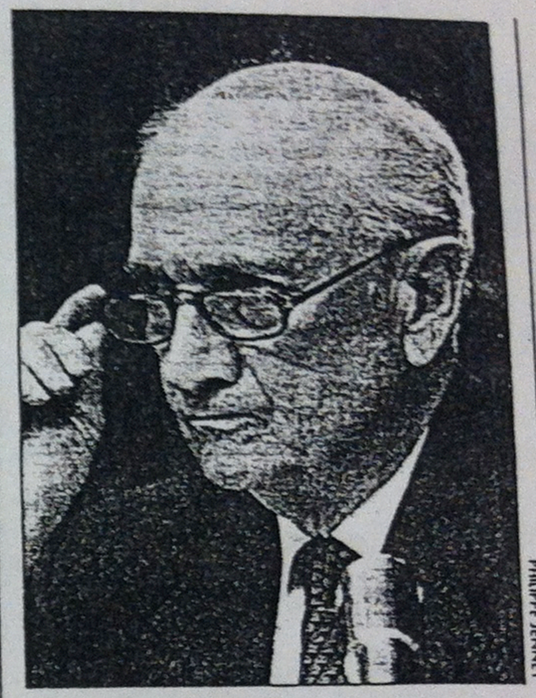
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LEGAL TIMES
LAW AND LOBBYING IN THE NATION'S CAPITAL
WEEK OF MARCH 18, 1991 • VOL. XIII, NO. 42 • $3.00

PR/IW/IC-27



Rep. Brooks Turns Up the Heat

# *For Justice Dept., Inslaw Case Won't Go Away*

BY GREG RUSHFORD

The messy Inslaw procurement scandal, which embarrassed the Justice Department in the 1980s when Edwin Meese III was attorney general, just won't go away.

Now, with Meese comfortably ensconced at the Heritage Foundation, it is Attorney General Richard Thornburgh and several key department careerists who are drawing the unfriendly fire.

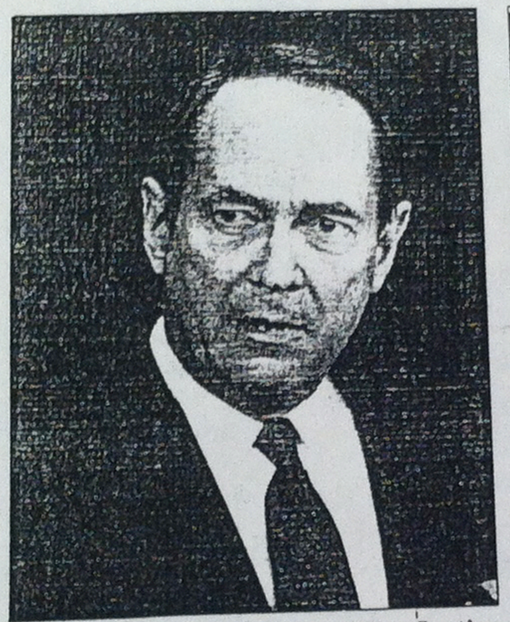
Unfortunately for Thornburgh, the chief congressional overseer of the Justice Department, House Judiciary Committee Chairman Jack Brooks (D-Texas), also happens to be Congress' top expert on the government's computer procurement practices.

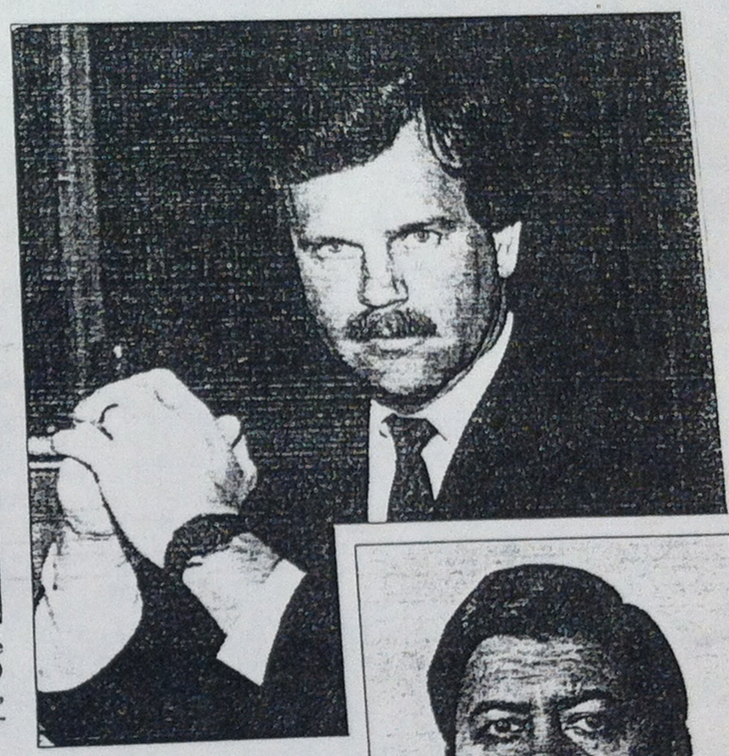
Brooks' long-running investigation of the Inslaw affair has entered a critical stage, with the Justice Department ready to turn over internal documents withheld from every other Inslaw probe. If Brooks finds evidence of official wrongdoing, Thornburgh and several top Justice officials—who cleared the department in their own probes—could find themselves in hot political waters.

Among the officials who have previously looked into the Inslaw case only to clear the department are Jay Stephens, U.S. attorney for the District of Columbia, who investigated the matter when he worked at main Justice under Meese; Gerald McDowell, chief of the Criminal Division's Public Integrity Section; Michael Shaheen Jr., counsel to the internal watchdog unit, the Office of Professional Responsibility; and Lawrence McWhorter, who heads the Executive Office of U.S. Attorneys in the Criminal Division.

Inslaw is the D.C.-based computer company whose case management software, PROMIS, was stolen by Justice Department officials with "trickery, fraud, and deceit," according to a 1988 opinion by then U.S. Bankruptcy Judge George Bason.

Bason's findings were upheld in November 1989 by Senior Judge William Bryant of the U.S. District Court for the District of Columbia. The department's appeal is pending before the U.S. Court of Appeals for the D.C. Circuit. Inslaw had sued the department in 1986, claiming it was driven into bankruptcy because officials improperly appropriated its software.





**Officials who have cleared the Justice Department on Inslaw include (from left) Attorney General Richard Thornburgh, U.S. Attorney Jay Stephens, and department watchdog Michael Shaheen Jr.**

Since last summer, Rep. Brooks has been pressing the Justice Department for more than 200 departmental documents collected together for litigation arising out of the Inslaw matter. Thornburgh has refused to turn over the documents, calling them "litigation-sensitive." The attorney general's recalcitrance has helped poison the atmosphere between the Justice Department and the feisty Brooks, a strong defender of congressional prerogatives.

Neither Brooks nor Justice Department officials, including Thornburgh, would comment directly on recent negotiations over the disputed documents. But Thornburgh—mindful that the Judiciary Committee controls his department's purse strings—seems ready to give Brooks what he has asked for, according to a Justice Department official.

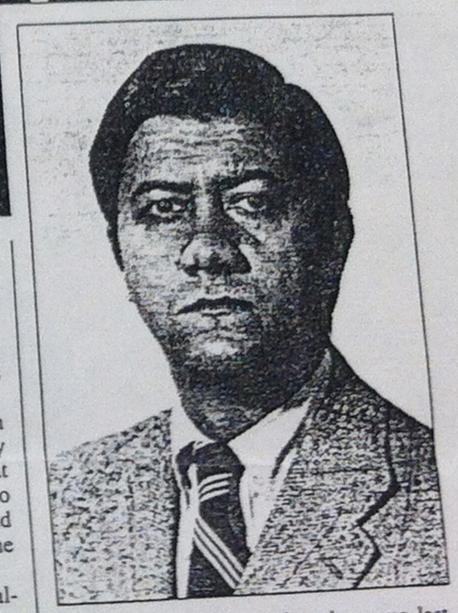
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SEE INSLAW, PAGE 16



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# ST. LOUIS POST-DISPATCH

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# McFarlane Implicated In Inslaw Case

## Ex-Aide To Reagan Said To Have Given Software To Israeli Intelligence

By Phil Linsalata
Of the Post-Dispatch Staff
©1991, St. Louis Post-Dispatch

New affidavits filed Saturday in the ongoing court battle between the Inslaw computer software company and the Justice Department charge that former White House aide Robert C. McFarlane transferred the software to Israeli officials without authorization of the owner.

One of the affidavits also claims that a former Justice Department official threatened retribution against one witness if he gives information about the case to congressional investigators.

Inslaw, based in Washington, is owned by St. Louis natives William and Nancy Hamilton. Its Promis software is used by law enforcement agencies to track cases and criminals.

But the Hamiltons have alleged that their product was stolen by the Justice Department in the course of a contract dispute, then distributed to intelligence and military agencies in Iraq, Libya, South Korea, Israel, Canada and elsewhere.

The affidavits, filed by Inslaw Saturday in federal court in Washington, say the case involves both McFarlane, who was national security adviser to President Ronald Reagan, and retired Air Force Major General Richard V. Secord.

McFarlane was implicated by former Israeli intelligence officer Ari Ben-Menashe in one of three affidavits filed.

He said McFarlane had a "special relationship" with Israeli intelligence officials and gave the software to the Israeli Defense Force's Signals Intelligence Unit in 1982. At that time, McFarlane was deputy director of the National Security Council.

It was also in 1982 that Inslaw first entered a contract with the Justice Department to provide an enhanced version of its Promis software.

McFarlane said he is "very puzzled" by the assertions, which he called "absolutely false."

The software is used to keep track of cases and criminals by municipal, state and federal prosecutors in the United States. But the Hamiltons say it is also suitable for unintended applications, such as case management by intelligence agencies or the tracking of dissidents by oppressive regimes.

The software, for example, received high marks from government security forces in Libya, according to one of three affidavits filed Saturday.

The recommendation of Libya convinced Iraqi intelligence leaders to acquire the software in late 1987 or early 1988, said Richard H. Babayan in his affidavit.

See INSLAW, Page 6

# Inslaw

From page one

Babayan is an arms trader and native of Iran. He filed his affidavit from his jail cell in West Palm Beach County, Fla., where he faces charges relating to the sale of securities in a pay telephone business.

He said Iraq got the software after a 1987 sales pitch from Secord and Dr. Earl W. Brian, an associate of Reagan and former Attorney General Edwin Meese III.

Brian's attorney, Lawrence Hirsh, said from his New York office that his client "doesn't even know any of these players and is extremely frustrated at people making things up about him.

"There is not a shred of truth" in any of the affidavits, Hirsh said.

Brian is an owner of a holding company, Infotechnology, which has interests in Financial News Network, United Press International and Hadron Inc., of Fairfax, Va.

Hadron made an aggressive buyout offer for Inslaw one year after the contract began, in March, 1982, according to court records. The contract was valued by Hamilton at about $10 million.

One month after Inslaw rebuffed the Hadron buyout offer, the Justice Department stopped payment to Inslaw, leading to a protracted bankruptcy case and a ruling that the Justice Department got the Promis software by "trickery, fraud and deceit."

That finding was upheld in one appeal but the Justice Department is appealing anew to the U.S. Circuit Court of Appeals.

The affidavit by Babayan and others indicate that while the Hamiltons fought their battle against the Justice Department, their software was being marketed around the world — with the blessing of U.S. government officials.

Babayan said he had been told of the software transactions by Abu Mohammed, a "senior ranking official" in Iraq's intelligence and security force.

During 1988 visits to Iraq, Babayan said in his affidavit, "I was informed that Dr. Earl W. Brian had, in fact, provided the Promis computer software to the Government of Iraq through a transaction that took place under the umbrella of Mr. Sarkis Saghanolian," a Florida resident now under indictment on charges relating to the supply of arms to Iraq.

Babayan states that Libya "had by then made extensive use of Promis, and that the government of Libya was highly recommending the Promis software to other countries ... one of the principal reasons for the decision of the government of Iraq to acquire Promis."

His affidavit also charges that Brian helped supply the software to South Korea'sCentral Intelligence Agency.

Another affidavit was filed by a self-proclaimed computer software writer and arms technician, Michael J. Reconosciuto, who claims he was retained to modify the software for use "in law enforcement and intelligence agencies worldwide."

Brian was "spearheading the plan," states Reconosciuto, who has a criminal record for conspiracy to manufac-

ture controlled substances. He describes Brian as "a private businessman who lives in Maryland and who has maintained close business ties with the U.S. intelligence community for many years."

Reconosciuto states that he worked on the software in 1983 and 1984 in his capacity as research director for a now-defunct joint venture between the Wackenhut Corp. of Coral Gables, Fla., and the Cabazon Indian tribe, which provided a secluded operations base on its reservation in the desert of Southern California.

The joint venture "maintained close liaison" with U.S. intelligence forces, Reconosciuto states. It was formed to develop sophisticated arms "including night vision goggles, machine guns, fuel-air explosives, and biological and chemical warfare weapons," according to the affidavit.

"The Contras in Nicaragua represented one of the most important priorities for the joint venture," his affidavit states.

Representatives of Wackenhut Corp. could not be reached for comment Saturday.

Reconosciuto states that the software came to him via the Justice Department officer responsible for buying the software from Inslaw, Peter Videnieks, who gave it to Brian for delivery to Reconosciuto. He states that he readied the software for Canadian police and intelligence authorities.

In his affidavit, Reconosciuto also said he was warned by Videnieks to keep quiet if questioned by staff members of the House Judiciary Committee. The committee is investigating the Inslaw matter.

Videnieks threatened that if Reconosciuto talked to investigators, he would be implicated in an unrelated criminal case and would lose an ongoing child custody case in which his wife is involved, according to the affidavit.

The threats came during a telephone conversation in February, according to Reconosciuto's affidavit.

"By way of underscoring his power to influence such decisions at the U.S. Department of Justice," Reconosciuto stated, Videnieks told him of a secret indictment against Reconosciuto's business associates "prior to the time when that indictment was unsealed and made public."

Videnieks' attorney, Laurence Eisenstein, said Videnieks would have no such power because he had not been a prosecutor while in the Justice Department and had left there for a post in the U.S. Customs Service by September 1990.

Eisenstein said the allegations "are absolutely untrue, utterly ridiculous and have no basis in fact that we know of."

"Mr. Videnieks has not made any threat or anything resembling a threat and at the time does not remember having met anyone named Reconosciuto," said Eisenstein. He represents Videnieks before the House Judiciary Committee.

Inslaw filed the affidavits in federal court in the District of Columbia. They were submitted in support of a request for new subpoena power and to have their matter removed from bankruptcy court to be heard by a district court judge.

The Washington Times

MONDAY, MARCH 25, 1991 ** WASHINGTON, D.C.

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PRTINTIC-29

# GAO fears Justice released secret data

> *"Our investigation leads to the unmistakable conclusion that at present, one simply cannot trust that sensitive data will be safely secured at the Department of Justice."*
>
> — Howard G. Rhile, director of the GAO's general government information systems division

By Jerry Seper
and J. Jennings Moss
THE WASHINGTON TIMES

The Justice Department may have compromised dozens of secret investigations — even placing some government witnesses and federal agents in jeopardy — by selling surplus computers without first erasing sensitive information from the memory banks.

The error may have put some informants, witnesses and undercover agents in "life-and-death" situations, according to a General Accounting Office report.

"Our investigation leads to the unmistakable conclusion that at present, one simply cannot trust that sensitive data will be safely secured at the Department of Justice," said Howard G. Rhile, director of the GAO's general government information systems division.

The Justice Department said it is investigating possible security breaches but has uncovered no evidence so far that confidential information has been compromised.

In a report Thursday to a House Government Operations subcommittee, Mr. Rhile said GAO found "patterns of neglect and inattention nationwide" that may have contributed to unauthorized disclosures.

"How this could happen and how adequately Justice has responded is an important story, one with life-and-death ramifications for individuals whose identities may have been compromised by the exposure of this sensitive information," said Mr. Rhile.

Law enforcement authorities yesterday said the compromised data could include the names of government informants, federally protected witnesses and undercover agents, grand jury proceedings, sealed indictments, confidential FBI investigations and personal data about Justice Department employees.

The situation is the result of a computer modernization program at the Justice Department in which old computer systems have been sold as surplus, some for as little as $45.

The department's new system will tie together 1,300 separate offices nationwide and 85,000 employees.

Assistant Attorney General Harry H. Flickinger, who heads the department's justice management division, told the subcommittee there

*see* DATA, *page A11*

## DATA

*From page A1*

was no evidence any confidential data had been released.

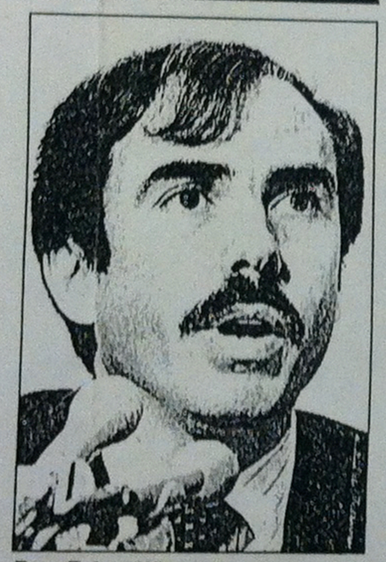
"Of course, it is true for us as it is for everyone: We don't know what we don't know," he said. "I can only report that we have no evidence of actual harm.

"Please do not misunderstand; I do not necessarily take comfort from that finding," he said.

Mr. Flickinger was not available yesterday for further comment.

Rep. Robert Wise Jr., chairman of the House Government Operations subcommittee on government information, has been critical of the Justice Department's handling of sensitive data since disclosures last year that it sold surplus computers containing sealed grand jury indictments and pending FBI investigations to a Lexington, Ky., man.

"We are spending billions of dollars each year to investigate and prosecute cases," said the West Virginia Democrat. "It is money wasted if prosecutions are compromised because of security deficiencies and irresponsible if people's lives are endangered."



Rep. Robert Wise Jr. has been critical of the Justice Department's handling of sensitive data.

The Kentucky incident involved Charles Hayes, who bought the equipment from the Justice Department in July 1990 for $45. The department, in a lawsuit demanding its return, said a technician had failed to erase the memory bank of a computer from the U.S. Attorney's Office in Lexington.

According to the lawsuit, the computer's memory and backup systems contained tapes with information about FBI informants, federally protected witnesses, sealed indictments and data about employees in the U.S. Attorney's office in Lexington.

The department said in the suit that if the information became public, the files could "ruin criminal investigations and cause great harm and irreparable injury" to the work of federal prosecutors.

Mr. Hayes, who intended to resell the equipment, later returned it. However, the Justice Department is not sure whether any information was improperly released.

Mr. Rhile said GAO investigators found the Kentucky case was not an isolated incident. He said that as recently as last month another U.S. Attorney's Office — which he did not identify — warned federal and local law enforcement authorities that "again sensitive data that could potentially identify agents and witnesses" may have been lost.

"The problems brought to light by the Kentucky incident and our investigation are systemic," he said. "They require dedicated departmentwide focused attention to bring about the changes that must be made without delay."

Based on what it called the "seriousness of this situation and the possibility of loss of life," the GAO recommended that the Justice Department track down all computer equipment sold as surplus to determine if any contained sensitive information. It also proposed that every branch of Justice that may have compromised information prepare a damage assessment.

Mr. Rhile described the GAO findings as "appalling" and told the subcommittee that their "highly sensitive nature" required that they be discussed in a closed session. He released only a "public version" of the GAO study.

"We are concerned that public discussion of some of the details of our inquiry may go too far toward disclosing security vulnerabilities and make it easier for individuals to compromise information that the department has an obligation to safeguard," he said.

Robert Gellman, chief counsel to the subcommittee, said yesterday that no closed-door session had been scheduled yet, but the GAO's complete report had been turned over to the Justice Department.

"The full report was a much more extensive version with lots of details to back up their concerns," he said. "It could fairly and accurately be described as quite condemning."

Mr. Gellman said concerns by the GAO that sensitive information may have been released "reflected similar concerns by committee members."

Rep. Al McCandless, ranking Republican on the subcommittee, said yesterday he was disappointed the Justice Department allowed the security breach to occur but was confident officials were correcting it.

"Here the integrity of the law enforcement department of our executive branch and our entire governmental system lacks some of the basics in confidentiality of some very sensitive material," said the California Republican.

In a statement to the subcommittee, Mr. Flickinger said security specialists have been sent to Justice Department agencies throughout the country to conduct "on-site security awareness training" and to initiate surveys to determine if there are problems in individual offices.

He added that while the agency does have "adequate policies in place" for computer security, he was not satisfied that compliance was adequate. He said manpower restraints have been a major reason.

"There is work to be done; but certainly with the benefit of the GAO audit findings and additional dedicated resources, we will continue to make good progress in tightening the program," he said.

"The department takes its computer security responsibility very seriously," he said.

Post 3/28/91

MARY McGRORY

# A Scandal Struggles to Be Born

A case that involves as much stonewalling as Watergate and as much intrigue as Iran-contra is a nasty fight between the Department of Justice and a family-owned company called Inslaw over custody of computer software. It is going into its eighth year and its fifth judge. Three judges recused themselves. Chief Judge Aubrey E. Robinson Jr. of the U.S. District Court has just taken the case, but so grudgingly that you wonder if justice, or even resolution, can be hoped for.

Robinson has been involved before in the long struggle. In June 1988, he ordered a halt to all discovery, or factfinding, in the matter while a Justice Department appeal was pending. Then last November, he gave voice to the universal aversion on the part of judges to find out if William and Nancy Hamilton, the principal owners of Inslaw, are a pair of paranoids masquerading as a wholesome, friendly midwestern couple or victims of government gangsterism. Justice first refused to pay them for their software and then tried to drive out of business.

His Honor once said in assigning the case to a Baltimore bankruptcy judge that "Judge [James F.] Schneider probably doesn't want it any more than anybody else wants it." He said of his attempt to give the matter to the Alexandria courts: "They wouldn't touch it with a 10-foot pole."

After mulling it over for 2½ years, Schneider recused himself, citing "potential conflicts relating to decisions yet to be rendered."

Why judges are so leery about taking the case is not clear. It is a scandal that will not die and one that is, after eight years, struggling to be born. Present occupants of the bench apparently do not wish to follow in the footsteps of Judge John J. Sirica, the boat-rocker who lifted Watergate from "third-rate burglary" status to political earthquake.

Inslaw has some volatile ingredients. A present and former member of the National Security Council have been named as parties. It has big names: Elliot Richardson, Watergate's most distinguished alumnus, represents Inslaw. It has big money: The Hamiltons say Justice owes them $6 million for the software and $9 million in legal fees. It has world-wide ripples: the Hamiltons say cronies of former attorney general Edwin Meese III pirated their product and sold it to the Canadian Mounties and the intelligence services of Israel, Korea, Iran and Chile.

Attorney General Dick Thornburgh, who inherited the mess from Meese, is showing himself as stalwart a stonewaller as his predecessor. He has refused to turn over 200 documents to Rep. Jack Brooks (D-Tex.), chairman of the House Judiciary Committee, who last December held a public hearing on Inslaw in the hope that Congress could do what the courts couldn't—decide if this was a contract dispute out of control or a world-class case of government malice and malfeasance.

In a letter to Brooks, who is formidable on matters of individual rights, Thornburgh wrote of the Hamiltons as people who "found it profitable to spin multiple conspiracy theories to whomever will listen."

Two judges, nonetheless, have decided in their favor. Judge George Francis Bason Jr. of U.S. Bankruptcy Court charged that the Justice Department had stolen Hamilton's software and tried to sink his company.

His testimony was uncommonly forthright. He called one Justice witness "demonstrably unbelievable." He cited "trickery, deceit and fraud."

Judge Bason was not reappointed when his term was up. He was, however, upheld by District Court Judge William B. Bryant.

The Hamiltons have lately come into an affidavit of dynamite potential. It is from an adventurer-entrepreneur named Michael J. Riconosciuto, a scientific genius who at age 10 strung up an alternative telephone service in his Spokane neighborhood. He is "no choirboy"—he was convicted 20 years ago of drug manufacture. He claims that in February he had a telephone conversation with a Justice Department official who warned him against cooperating with the Judiciary Committee. The official threatened him with criminal prosecution in a savings and loan case if he did and promised him a favorable outcome in his wife's child custody case if he didn't.

Riconosciuto would make a colorful witness. He was engaged in manufacturing munitions for the contras on an Indian reservation. He used Inslaw's software, which he said he got from Earl W. Brian, a member of Ronald Reagan's cabinet when he was governor of California and an intimate of Meese. Brian denies Riconosciuto's claim.

But Riconosciuto says he has a tape of his talk with the Justice official. If so, the Inslaw case may at last get the attention it deserves.

PR IN IC-31

(206) 259-6041 (205



# Key Witness in Justice Dept. Software Case Jailed

By Gary Lee
Washington Post Staff Writer

A key witness in the eight-year-old legal battle between the Justice Department and the Inslaw computer software company has been arrested and is being held without bail in a rural Washington state jail.

Michael Riconosciuto, a potential witness on behalf of principal Inslaw owners William and Nancy Hamilton, was arrested late Friday near Tacoma by a local district attorney. Riconosciuto, 42, is being held without bail at the Snohomish County jail in Everett, Wash., an official there said in a telephone interview yesterday. The official said that the arrest record did not indicate what charges had been brought against Riconosciuto.

Riconosciuto, reached yesterday by telephone at the jail, said he thought the charge was for "delivery of controlled substances," but said he was unsure. He said he could not remember if a charge was made at the time of the arrest but overheard an officer stating it later. Riconosciuto was convicted on a drug-related charge in 1972.

He said he was arrested with two local men who had just sold him computer equipment for $1,000. The two were "known drug users," Riconosciuto said.

"I've been set up," he said. "I've been had."

The legal battle Riconosciuto was involved in, which has been shuffled among courts since 1983, involves Promis software, developed by Inslaw, a Washington, D.C.-based company. The software was designed to be used by law enforcement officials to track cases and criminals.

The Hamiltons charge that the software was stolen by the Justice Department in the course of a contract dispute and has been subsequently distributed to intelligence and military agencies in, among other countries, Iraq, Libya, South Korea, Israel and Canada.

Last month Riconosciuto, a computer software technician, filed an affidavit in the case, saying that private interests hired him in 1983 and 1984 to modify the software for use by law enforcement and intelligence agencies worldwide.

In the affidavit, Riconosciuto said that he was called in February by a former Justice Department official and warned against cooperating with an investigation into the case by the House Judiciary Committee.

In the affidavit, Riconosciuto said the former official, Peter Videnieks, told him that if he talked to investigators he would be implicated in one unrelated criminal case and would lose another ongoing child custody case.

Riconosciuto said he had three separate tape recordings of the telephone conversation with Videnieks, two of which were confiscated during his Friday night arrest.

PR/IN/IC-32



# Ottawa claimed duped in 'stolen' software row

By NEAL HALL
Sun Crime Reporter

The Canadian government probably innocently acquired "stolen" computer software allegedly being used by the RCMP and Canada's domestic spy agency, says the lawyer for a U.S. firm that developed the software.

"We think the Canadian government got it innocently," Charles Work said in an interview from Washington, D.C. "They got duped."

He said his clients, William and Nancy Hamilton, owners of Washington-based Inslaw Inc., which developed the PROMIS software, want payment for any unauthorized use by Canadian agencies. Inslaw also wants to find out who gave or sold PROMIS to Canadian officials.

U.S. court documents obtained by The Vancouver Sun show a Canadian communications department official admitted last year to an Inslaw employee that the RCMP was using PROMIS, although Inslaw never authorized its Canadian sale.

Jonathan Fried, a Canadian embassy official in Washington, D.C., later said in a letter to Patricia Hamilton, a daughter of the Inslaw owners who works for the company, that the Canadian International Development Agency and the department of public works had only considered purchasing software named "Promis."

Fried said PROMIS was not being used by the RCMP.

Affidavits filed Saturday in U.S. bankruptcy court in Washington allege the software was modified for the RCMP and the Canadian Security Intelligence Service.

Other affidavits allege it was also illegally distributed to military and intelligence agencies in Libya, Korea, Iraq and Israel.

Vancouver RCMP spokesman Sgt. Peter Montague repeated Wednesday a denial that the force is using PROMIS. He said he has checked several times with RCMP computer specialists and no one knows of PROMIS being used.

Software systems are purchased through Supply and Services Canada, Montague said, although simple writing programs are bought at computer retail outlets.

CSIS spokesman Ray Boisvert said Wednesday from Ottawa he could neither confirm nor deny if CSIS was using PROMIS because such information might be used by computer "hackers" employed by a "hostile intelligence service."

Inslaw officials say U.S. government officials conspired to put Inslaw law out of business so high-ranking friends of then-president Ronald Reagan could gain control of the program and market it. There is also a suggestion sales of the pirated software may be linked to supporting the Contras in Nicaragua during Reagan's administration.

One affidavit filed in support of Inslaw's case says Earl Brian, a friend of former U.S. attorney-general Edwin Meese, and Robert McFarlane, a former national security adviser to Reagan, provided copies of PROMIS to Israeli military-intelligence officials.

Iranian arms dealer Richard Babyan alleges Brian sold the software to agents in Iraq through a broker in Santiago, Chile.

Brian owns a holding company, Infotechnology, that has interests in the Financial News Network, United Press International and Hadron Inc. of Fairfax, Va. Hadron Inc. tried to buy out Inslaw about a year after Inslaw was awarded a $10 million US contract in 1982 to provide the software to keep track of several complex court cases for the U.S. justice department. The justice department stopped paying Inslaw for its contract shortly after the Hadron offer was rejected.

An affidavit sworn by Michael J. Riconosciuto says he was director of research for a joint venture by the Wackenhut Corp. of Florida and the Cabazon Indian band of Indio, Calif.

Riconosciuto states that in 1983 and 1984 he modified the PROMIS software supplied to him by Brian, specifically for the RCMP and CSIS, and Brian then sold this version.

Brian and McFarlane have both denied the allegations made in the affidavits.

A federal bankruptcy judge, George Bason, concluded in 1988 that Inslaw's proprietary software was stolen by U.S. justice department officials with "trickery, fraud and deceit."

The department appealed, but Bason's findings were upheld in 1989 by Judge William Bryant of the U.S. district court in Washington, D.C.

The case is being appealed by the justice department and is part of an investigation by the congressional judiciary committee.

Nancy Hamilton said in an interview with The Sun this week the PROMIS software may have been adapted and distributed in Canada under a different name.

She said Inslaw was driven into bankruptcy by the government but was bailed out by a $2.5-million loan by IBM to further develop the software. A copy of the program sells for $155,000, she added.

PRFINFIC-33

VANCOUVER SUN - FRIDAY, APRIL 5, 1991



# Probe of hot-software charge urged

PETER O'NEIL in Ottawa
and NEAL HALL in Vancouver

Solicitor General Pierre Cadieux should go before a parliamentary committee to answer charges the RCMP and CSIS are using stolen computer software, opposition MPs said Thursday.

The PROMIS software was allegedly pirated by U.S. justice department officials and sold by associates of former president Ronald Reagan to government agencies in Canada, Libya, Iraq and Israel, according to affidavits filed in U.S. bankruptcy court last week.

Spokesmen for the RCMP and Canadian Security Intelligence Service have denied they're using the software, which is designed for law-enforcement agencies to track cases and criminals.

But some MPs said Thursday they're not satisfied with the denials.

"I find the allegations distressing," said John Brewin (NDP-Victoria).

## Victoria MP wants Cadieux grilled

Brewin will request that Cadieux, minister responsible for the Mounties and CSIS, appear before the justice and solicitor-general committee.

There are many questions for the minister, Brewin said.

"Did CSIS and the RCMP use PROMIS software or modifications of it? If so, what were the circumstances of the acquisition? Was the software stolen, and if so, was the Canadian government aware of it?"

Liberal John Nunziata (York South-Weston) said Cadieux is already slated to appear before the committee this month.

"It's one of the issues I will pursue," said Nunziata, his party's solicitor-general critic. "My concern is whether the Canadian government or the officials within CSIS and the RCMP knew about the background to this software."

Cadieux spokesman Marysé Pesant refused to comment Thursday, saying the external affairs department is dealing with the matter.

An external affairs spokesman couldn't be reached for comment.

The allegations about Canada using the software is the latest chapter in a messy legal battle in the U.S. involving the justice department and Inslaw Inc., a small Washington, D.C.-based firm that designed the PROMIS software.

A federal bankruptcy judge, George Bason, concluded in 1988 that Inslaw's proprietary software was stolen by U.S. justice department officials using "trickery, fraud and deceit."

Bason's findings were upheld in 1989 by Judge William Bryant of the U.S. district court in Washington.

The case is being appealed by the justice department. The congressional judiciary committee is also investigating, but is having trouble extracting information and documents from government officials.

U.S. court documents obtained by The Vancouver Sun show a Canadian communications department official originally admitted last year to an Inslaw employee that PROMIS was being used by the RCMP "to support 900 locations in Canada" even though Inslaw had never authorized a Canadian sale of PROMIS.

Inslaw officials allege U.S. government officials conspired to put Inslaw out of business so high-ranking friends of Reagan could control the software program and market it profitably.

There is also a suggestion sales of the pirated software may be linked to supporting the Contras in Nicaragua during the Reagan administration.

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Friday April 5 1991

PRIIWIIC-34

# McFarlane named in security software case

By Alan Friedman and Eric Reguly in Washington

A BIZARRE series of allegations – including claims of misconduct by Mr Robert McFarlane, the former national security adviser to President Ronald Reagan – have surfaced as a result of a seemingly obscure legal action involving the US Department of Justice and a small Washington computer software company called Inslaw.

Among allegations contained in court affadavits filed in recent weeks in support of Inslaw is the charge Israeli intelligence forces are using an Inslaw computer software system illegally provided by Mr McFarlane.

The affidavits also claim Inslaw's case-tracking Promis software was stolen by the US Department of Justice and found its way to the governments of Israel, Canada and Iraq. The software allows users to keep track of information on criminal cases and individuals and is designed for use by police and intelligence agencies.

The case of Inslaw, which won a court victory against the Justice Department in 1987, appears at first glance to be an obscure lawsuit by a small business that was forced into bankruptcy as a result of the loss of its proprietary software.

But several members of the Washington establishment and US press reports suggest Inslaw may be only the tip of an iceberg that could have implications for US foreign policy in the Middle East.

A lawyer representing Inslaw is Mr Elliot Richardson, a former US attorney general. Yesterday, he told the FT: "Evidence of the widespread ramifications of the Inslaw case comes from many sources and keeps accumulating."

Mr Richardson said last night that "it remains inexplicable why the Justice Department consistently refuses to pursue this evidence and resists co-operation with the Judiciary Commitee of the House of Representatives."

The Inslaw case began in 1982 when the company won a $10m contract to install its software at the Department of Justice. In 1983 the department stopped paying Inslaw and the firm eventually went into bankruptcy proceedings.

## Israeli intelligence is alleged to be using illegally supplied computer software

Inslaw sued the Justice Department in 1986 and the trial took place a year later, when a federal bankruptcy court ruled in Inslaw's favour. The ruling said that the Justice Department "took, coverted, stole" Promis software through "trickery, fraud and deceit" and then conspired to drive Inslaw out of business.

That ruling, which received little publicity at the time, was upheld by the US District Court in Washington in 1989, but the Justice Department lodged an appeal last year in an attempt to overturn the judgment that it must pay Inslaw $6.1m in damages and $1.2m in legal fees.

The affadavits relate to an imminent move by Mr Richardson on behalf of Inslaw to obtain subpoena power in order to demand copies of the Promis software that the company alleges are now being used by the Central Intelligence Agency and other US intelligence services.

In response, Mr McFarlane has stated that he is "very puzzled" by the allegations that he passed any of the software to Israel. He has termed the claims "absolutely false".

In addition to alleging that the stolen software was used by US intelligence, Inslaw's new affadavits also state that the same software has been sold illegally to the Royal Canadian Mounted Police and the Canadian Security Intelligence Service. This could not be confirmed or denied yesterday.

In the affadavit relating to Mr McFarlane, Mr Ari Ben-Menashe, said to be a former Israeli intelligence officer, claims that Mr McFarlane had a "special" relationship with Israeli intelligence. Mr Ben-Menashe alleges that in a 1982 meeting in Tel Aviv, he was told that Israeli intelligence received the software from Mr McFarlane.

The Washington Post

TUESDAY, APRIL 9, 1991

PRINT IC-35

MARY McGRORY

# Elliot Richardson and the Judge

The last time anyone in the U.S. government tried to get rid of Elliot Richardson, the effort was entirely successful and dreadfully expensive—eventually it cost Richard Nixon the White House.

That, of course, was on Oct. 20, 1973, when then-President Nixon ordered the then-attorney general to fire Watergate special prosecutor Archibald Cox. Richardson's code did not permit him to bounce a friend, mentor and fellow Bostonian who had done nothing wrong beyond trying to find out what Nixon was up to in the White House. He resigned, and the rest is history.

Now the Justice Department of Dick Thornburgh is trying to fire Richardson from the messy Inslaw case. It is easy to see why. The mere name of the former secretary of just-about-everything rings bells, attracts press, invites suspicion that the department did something wrong in its dealings with the firm from which it bought software that has turned up all over the world—sold, say the owners, by cronies of Edwin Meese III.

The case has dragged on for years. One witness has recanted, another is in a Washington state jail, a third, in Canada, seems to have disappeared, at least from government, where he worked. Justice refuses to give documents to William and Nancy Hamilton, the husband and wife who are principal owners of Inslaw, or to House Judiciary Committee Chairman Jack Brooks (D-Tex.), who is looking into the matter. Three judges have recused themselves from the case. A bankruptcy court judge named George Bason Jr. who found in the Hamiltons' favor—he accused Justice of "trickery, fraud and deceit" in stealing the software—was not reappointed.

He also ruled that Richardson's firm and Richardson himself were disqualified, because his firm was an Inslaw creditor and Richardson had been a witness before him.

Justice, in pointing out this fact in a letter to Aubrey E. Robinson Jr., chief judge of the U.S. District Court here, who is now reluctantly presiding over a bypath of the case—the Hamiltons' right of discovery—expressed the hope that Richardson would not speak in court.

Of course, he did. He stood up, his clean jawline and rosy cheeks unchanged by the years, and walked slowly to the lectern.

"May I address the court?" he asked.

Robinson, who has expressed his intense aversion to the case, said testily, "I had not expected you to."

Richardson was soothing. "We know it is unusual, but the circumstances are unusual. What I seek to do is to focus on some of the mists surrounding the information."

Much of what his honor said was inaudible. Like most federal judges, he leans away from the microphone, but his body English, and the tone of his voice, conveyed his intense exasperation with having gotten stuck with the case that one witness, who has since taken it back, said was "another Watergate." Robinson has no desire to be another John J. Sirica, the night-school law graduate district judge who cracked Watergate.

"I am not prepared to charge the government with obstruction of justice," Richardson said suavely—and went on to allege the Justice Department's use of "every conceivable means to prevent the facts from coming out."

"I don't understand how this is helpful at all," Robinson said brusquely. "I am not going back to '83, '84, '85."

Richardson, undeterred, pressed on. He spoke of an internal Justice Department investigation, which called only one of the 30 witnesses that the Hamiltons say could bolster their claim that Justice stole their software.

The judge stirred and frowned. Richardson, knowing that Robinson hardly wanted to sit him down, as he might have another lawyer, spoke of an affidavit by Ron LeGrand, who in late April 1988 told him and Charles Work, the counsel of record for the Hamiltons, that the case was "a lot dirtier than Watergate in breadth and depth"—and recanted it 18 months later.

Robinson interrupted and railed steadily. But something Richardson said must have gotten to him. Maybe when he spoke of the "highest responsibility" of government lawyers, of the "strict standards to which government must be held."

Whatever it was, the judge ruled in the Hamiltons' favor. They can have 30 days of "limited discovery" to find out what happened. Robinson didn't ever say whether Richardson is disqualified. Given his exasperation with the case, he doubtless hopes he doesn't see the connoisseur of coverup in his court again soon—or hear him.

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PRIIWIFC-36

# Inslaw wins court order over 'theft'

By Eric Reguly in Washington

INSLAW, a Washington-based software company, has been granted 30 days in which to follow up its claims that the US Justice Department broke an injunction preventing it from distributing Inslaw's equipment.

A federal bankruptcy court judge yesterday granted limited powers to Inslaw to subpoena witnesses as part of an effort to speed up the slow-moving investigation into Inslaw's claims that the Department pirated the company's equipment.

The judge's approval for these discovery powers is considered by the company's owners and lawyers to be a major victory for Inslaw. The private company has been denied discovery authority since 1988.

Inslaw and its lawyer, Mr. Elliot Richardson, former US Attorney-General, claim that the software was pirated by the Justice Department in the early 1980s and later sold by associates of then-President Ronald Reagan to the governments of Israel, Iraq, Libya and Canada. Inslaw now has 30 days to question agencies of the Department of Justice, which is appealing against a 1988 ruling that it "stole" the software. The software, known as Promis, is used by intelligence and law enforcement agencies to track information in criminal cases.

Inslaw will use its new authority to determine whether proprietary versions of Promis are used in agencies such as the FBI. Inslaw wants to learn whether the Justice Department broke a court injunction preventing it from distributing the software to new users.

The Inslaw case is attracting attention in Washington. There are suggestions the case may be the tip of an iceberg that could have implications for US policy in the Middle East.

Inslaw has been fighting an eight-year battle over custody of Promis. The case is associated with lists of weapons dealers, government security advisers and intelligence agents.

It began in 1982 when a company accepted a $10m contract to install Promis at the Justice Department. The department stopped paying its bills a year later; this is alleged to have forced Inslaw into bankruptcy. Inslaw sued the department and won its case in 1988. The ruling was upheld in 1989.

Inslaw's lawyers have accused the Canadian government of stonewalling on the Inslaw case by denying it uses Inslaw software. The Canadian government has denied it is using Promis software, but admits it may have evaluated it.

Washington Post
4/27/91

PR/INFIC-37

# *Progress on Inslaw?*

EXACTLY A YEAR ago this week, we published an editorial praising Attorney General Dick Thornburgh for his decision to cooperate with the House Judiciary Committee's investigation of the Inslaw case. "After six years of stonewalling," the editorial said, "the Justice Department has finally taken a conciliatory step toward getting to the bottom of a nasty contract dispute."

We wrote too soon. The department continued to resist the committee's request for some documents, and the investigation has been hamstrung while lawyers argued over what should be shared and what should remain secret. This week agreement was finally achieved—or so we think—and after *seven* years of stonewalling the department has pledged full cooperation.

Inslaw is a small computer software company with headquarters in this city. The company signed a contract with the federal government in 1982 to supply all 94 U.S. attorney's offices with software it had developed to track the progress of cases and compile information about caseloads. The contract accounted for 70 percent of Inslaw's business. In early 1984, though, the government terminated the agreement, and the company slid into bankruptcy. From the government's perspective, matters went downhill from there. Inslaw won an important victory in bankruptcy court, where a judge found that the department "took, converted and stole" the company's property "by trickery, fraud and deceit." He said the government's conduct demonstrated "bad faith, vexatiousness, wantonness and oppressiveness," and while that language may seem strong, U.S. District Court Judge William Bryant agreed completely. In 1989 he ordered the government to pay Inslaw $8 million plus attorney's fees. That decision has been appealed.

Meanwhile, committees in both houses of Congress took a look at the case. More is at stake than money, for what Inslaw charges, in a nutshell, is that some officials in the Meese Justice Department and their friends deliberately drove the company out of business, stole the software and have been making a fortune selling it here and abroad. The probe on the Senate side was inconclusive because the department refused to comply with requests for documents. The House Judiciary Committee has been more insistent, and now Chairman Jack Brooks' (D-Tex.) persistence has paid off. The attorney general will let committee investigators see every document, though it is understood that some material sensitive to the litigation will be treated in confidence. This simple arrangement should not have taken nearly so long. The breakthrough is welcome. We hope it is for real this time.

PR(INVIC-38

Tuesday April 30, 91

MARY McGRORY

# Political Break in Inslaw Case

Attorney General Dick Thornburgh has made his peace with Jack Brooks, the formidable Texas Democrat who heads the House Judiciary Committee. Last Friday, an accord was announced that will allow Brooks to see Justice Department documents that have been withheld for years in the smelly Inslaw case, the eight-year-old dispute over the department's handling of computer software. Washington immediately leapt to the conclusion that Thornburgh, the former governor of Pennsylvania is running for the Senate, to fill the seat left vacant by the death of John Heinz.

Thornburgh fed speculation by declaring he was "considering it" (the race). His aides insist that his decision to give way on the question of the Inslaw documents was taken months ago, long before he had any ideas about the Senate. Still, the timing, the clearing of the decks, seems like the act of a man who is trying to tie up a few loose ends before taking the plunge.

Is the White House happy to be losing a Cabinet officer? Not so you would notice it. President Bush already has chosen a successor, according to political Californians. Their erstwhile governor, George Deukmejian, bored to death in private law practice, is dying to take Thornbrugh's job, and is being encouraged to think he will—thereby, theoretically, pleasing the most populous state in time for 1992.

Thornburgh's relations with the White House have improved steadily after a bumpy start. His choice of Bob Fiske of the American Bar Association as his deputy, caused much bristling among the conservatives—Fiske had committed the unpardonable offense of failing to deliver a unanimous ABA committee vote for the Supreme Court nomination of Robert H. Bork. Thornburgh withdrew Fiske.

Since those days, Thornburgh has demonstrated a hard-nosed concern for White House interests in the touchy area of the Iran-contra trials, fighting to disbar embarrassing documents, witnesses and even defendants.

In the matter of Inslaw, White House views are not known. The messy case involves computer software developed by a family firm, which claims it was pirated by friends of former attorney general Edwin Meese III and sold around the world; it is dragging through the courts with Dickensian slowness, beset by recusing judges and recanting witnesses. Thornburgh has displayed extraordinary solicitude for a predecessor and contempt for the plaintiffs.

In a 1989 letter to Brooks, Thornburgh wrote of Nancy and Bill Hamilton—he is the inventor of the software, she is the vice president of the bankrupt firm—that "they spin these tales of conspiracy theories and proffer them to whoever will listen."

But some people have listened. In Canada, for instance, where the disputed software is being used by the Royal Canadian Mounted Police, Inslaw is big news. The most inconvenient aspect of the case has been the retention by the Hamiltons of former attorney general Elliot Richardson, whose presence guarantees a certain dignity and news media attention to the proceedings.

A man who is running for the Senate would certainly not want quotes from Richardson being used by his opponent. The last time Richardson went to court in the case, he said, in a manner calculated to make a candidate's flesh crawl, "I am not prepared to charge the government with obstruction of justice"—which meant, of course, that he is prepared to do so. From him, such a charge could be damaging. Inslaw seems on the surface to be a particularly nasty contract dispute, but its tentacles reach into alarming places like the Iran-contra scandal and the allegedly delayed return in 1981 of Americans held hostage in Iran.

The question is whether Thornburgh understood the implications of Inslaw and so behaved as he did for several years, or whether he never really grasped them and ignored the case out of a reluctance to take hold of a slimy mess.

Thornburgh's press secretary, Dan Eramian, says his boss has not decided about running for the Senate. Pennsylvania Republicans pray he will. He would be invincible, they think. After two statewide campaigns for governor, he has total name recognition. Anyone skeptical about his strength has merely to look at the absence of Democrats eager to fight for—or even accept—the six-month vacancy that Democratic Gov. Robert P. Casey must fill. No one thinks the brief incumbency would offer any advantage against Thornburgh.

Harris Wofford, a distinguished alumnus of the New Frontier and the Peace Corps, is being pushed for consideration. He was Casey's campaign manager. He is known for his Ghandian views on military and political combat. He would, however, know what to make of charges like coverup, stonewalling and other practices that have characterized the Justice Department's handling of Inslaw.

Politics is a wonderful thing. Because of Thornburgh's ambition, it is possible that something like justice may be done in a case that, as columnist James J. Kilpatrick said, "stinks to heaven."

WASH TIMES 5/8/91

# Appeals court reverses Inslaw ruling

By Jerry Seper
THE WASHINGTON TIMES

A U.S. Bankruptcy Court judge erred when he ruled that Justice Department officials "stole" a software program from a Washington computer company, a federal appeals court said yesterday.

The U.S. Court of Appeals here reversed a January 1988 ruling, saying Bankruptcy Judge George Bason Jr. lacked jurisdiction to rule in a long-standing contract dispute between Justice and Inslaw Inc.

The appeals court vacated Judge Bason's award of more than $7.8 million to Inslaw in damages, attorney fees and expenses — which was upheld in November 1989 by U.S. District Judge William B. Bryant.

Inslaw could still pursue in other courts claims it has made that the department conspired to steal the sophisticated computer tracking package, for which it signed a $10 million contract with Justice in 1982, the appeals court said.

But the controversial case could not be decided under federal bankruptcy laws, according to an opinion written by Judge Stephen F. Williams.

"Such conduct, if it occurred, is inexcusable," Judge Williams wrote. "Offensive as lawless conduct by one branch of government may be, however . . . does not justify another's lawlessness."

The appeals ruling suggested a federal court lawsuit by Inslaw under the Trade Secrets Act against Justice might be a proper forum to resolve the controversy, already 8 years old.

Assistant Attorney General Stuart M. Gerson said yesterday the department was "gratified" by the ruling and that it "vindicates the position the government has taken from the outset."

"Notwithstanding the intensity of the underlying dispute between Inslaw and the department, this is fundamentally a matter of commercial and contractual disagreement that should have been handled as such," said Mr. Gerson, who heads the department's civil division.

The dispute involves a three-year, $10 million contract awarded by Justice to Inslaw in March 1982 to provide software to U.S. attorneys' offices nationwide. The software was designed to track criminal cases and defendants through the legal system.

Inslaw President William A. Hamilton said the company went bankrupt after Justice began withholding payments, a month after the department demanded — and obtained — a copy of the firm's proprietary software.

Mr. Hamilton accused Justice offi-

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## INSLAW

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cials, including former Attorney General Edwin Meese III, of conspiring to steal the software to deliver it to a rival firm headed by a longtime Meese associate.

Inslaw took the matter before Bankruptcy Judge Bason, who ruled that Justice officials "took, converted and stole" the Inslaw software through "trickery, fraud and deceit." The decision later was upheld by Judge Bryant.

The Justice Department appealed. The judgment was never paid.

Mr. Hamilton said yesterday he was "surprised" by the ruling.

"It's a lot to wait for five years . . . to be told you came in the wrong door," Mr. Hamilton said. He said he would consider all options, including filing a new lawsuit, asking the appeals court to rehear the case and seeking Supreme Court review, but he declined further comment.

Mr. Meese has denied any wrongdoing. A Justice Department investigation cleared federal officials of any misconduct in the Inslaw matter.

Judge Bason, whose reappointment to the bankruptcy court was denied less than a month after the Inslaw ruling, said yesterday he had not seen the appeals court decision and also declined comment.

He told a House Judiciary subcommittee in December, however, he was "convinced beyond any doubt" that Justice officials had orchestrated "a criminal conspiracy" to steal the Inslaw program.

A former law professor at American University, Judge Bason also told the subcommittee his removal from the bench "was the result of improper influence from within the Justice Department."

"If Justice Department officials were willing to steal from and try to liquidate Inslaw and then lie about it under oath, there is every reason to believe they would not hesitate to do whatever was necessary and possible to remove from office the judge who first exposed their wrongdoing," he told the subcommittee.

PRIINIC-39

# Justice Department Wins Appeal in Inslaw Case

## *Company Vows to Press Conspiracy Claims*

By Mark Potts
Washington Post Staff Writer

A federal appeals court yesterday threw out a bankruptcy judge's 1987 decision that Justice Department officials used "trickery, fraud and deceit" to drive a small Washington company out of business by stealing a computer program the firm developed.

The Justice Department, which has been fighting a mostly losing battle for eight years against Inslaw Inc.'s charges, said it was "gratified" by the appeals court decision.

But while the three-judge appeals panel ruled that the bankruptcy court had claimed "extraordinary" and improper jurisdiction in the case, the appeals court suggested that Inslaw refile its suit in another federal court. The court said that the Justice Department's "conduct, if it occurred, is inexcusable."

William Hamilton, Inslaw's president, said his company would continue its legal fight against what it claims is a conspiracy by officials in the Justice Department and the Reagan and Bush administrations.

"We think it's a very narrow technical decision that involves [the appeals court] saying you came into our courthouse through the wrong door," Hamilton said. "Whatever we have to do, we'll do it. But if the Justice Department thinks this is the way to get them off the hook, they're mistaken. . . . If we do bring a new lawsuit, the charges of government malfeasance will be far more sweeping than what we brought in 1986, because we've uncovered far more evidence."

Yesterday's decision is the latest twist in the long, complicated and often bizarre Inslaw saga. Hamilton, who has been dismissed by some critics as being little more than a paranoid conspiracy buff, has claimed his case is tied into the 1981 release of the American hostages from Iran, the Iran-contra incident and other less celebrated scandals. Although many of his charges remain unproved, until yesterday Inslaw had a remarkable track record in getting judges to agree with its allegations that his company was mistreated by Justice Department officials.

The decision by the federal court of appeals for the District of Columbia reversed a 1987 bankruptcy court decision, later upheld by a district judge, that Justice officials had pirated software developed by Inslaw to track cas-

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Post 5/8/91 Business C8

# Justice Wins Inslaw Appeal

INSLAW, From C8

es in U.S. attorneys' offices. Inslaw—which has claimed Justice officials illegally spread modified versions of the program to law enforcement and intelligence agencies around the world—had been awarded more than $8 million in damages and attorneys' fees.

In the strongly worded decision, the appeals court said the bankruptcy court had overstepped its bounds by deciding that the Justice Department's actions violated the "automatic stay" provision of bankruptcy law, which was supposed to protect Inslaw from its creditors after it filed for bankruptcy in 1983. (Inslaw emerged from bankruptcy in 1988.)

The bankruptcy court had ruled that by spreading unauthorized copies of Inslaw's software and allegedly interfering with the company's affairs, the department had hindered Inslaw's ability to reorganize under bankruptcy protection.

But while the automatic stay is designed to protect the "property of the estate," the appeals court ruled that software already obtained by the department under the contract was its property, not Inslaw's, and therefore its use was not covered by the automatic stay rules.

"The [Justice] Department has been hauled in front of the bankruptcy court simply because Inslaw filed for bankruptcy, and Inslaw has succeeded in convincing the bankruptcy court to adjudicate its . . . disputes with the department, although the court had no basis under the Bankruptcy Code to do so," appeals court Judge Stephen F. Williams wrote in the decision.

Wash Post
5/11/91

PR|IN|IC-41

# *Inslaw: Back to Square One*

AFTER EIGHT years of battling the Justice Department both in and out of court, Inslaw, a local computer software company, finally suffered a major setback this week. A unanimous panel of the U.S. Court of Appeals reversed two lower court judges who had ruled in favor of the company and had awarded $8 million in damages, attorneys' fees and costs. The appeals court did not rule on the merits of the company's fraud and contract claims against the government, but the ruling nevertheless puts the company back to square one in its effort to best the government and win damages.

Inslaw developed a software system that is used in U.S. attorneys' offices across the country. In the early '80s, it had a multimillion-dollar contract with the Department of Justice to provide and install this system, which accounted for most of its revenues. The company's officers believe that certain officials in the department conspired to force the company into bankruptcy in order to steal Inslaw software for their own profit. In 1988 a bankruptcy judge, in a strongly worded opinion, decided all these claims in favor of Inslaw. The following year, a U.S. District Court judge affirmed, again in the strongest terms.

Now the appellate court has ruled, however, that these actions were far outside the jurisdiction of the bankruptcy court, which does not have the authority to settle them. "[T]he Department," the judges found, "has been hauled in front of the bankruptcy court simply because Inslaw filed for bankruptcy, and Inslaw has succeeded in convincing the bankruptcy court to adjudicate its contract, tort, . . . trade secret and administrative law . . . disputes with the Department, although the court had no basis under the Bankruptcy Code to do so."

Where does this leave Inslaw? Without a remedy and without the $8 million, at least for the time being. The appellate court suggests that new suits can be filed in the correct forums, and the judges went out of their way to say that if Inslaw's allegations are true, the government's conduct is "inexcusable." Meanwhile, the House Judiciary Committee is proceeding with its investigation of the case, now with the full cooperation of the Justice Department.

This is an important dispute involving millions of dollars and the reputation of a number of government officials. It shouldn't drag on for another eight years. The Judiciary Committee can provide a service by conducting a thorough and unbiased review of the facts, which may help the parties to work out a settlement instead of returning to court.

PR|IN|IM-01

3-8-88-WP

# Settlement to Pay IUD Claims Leads to '87 Loss at Robins

A.H. Robins Co. Inc., the Richmond pharmaceutical company that has been embroiled in a legal controversy over the Dalkon Shield intrauterine device for most of the past 15 years, yesterday reported a loss for 1987 of $1.6 billion, compared with a profit of $81.8 million ($3.38 per share) last year.

The loss stems from the estimated cost of the company's settlement of the outstanding Dalkon Shield liability claims.

Under the terms of the company's Chapter 11 reorganization plan, which includes a takeover of the firm by American Home Products Corp., Robins will set aside $1.75 billion to pay Dalkon Shield claims. In addition, the firm reported $44.2 million for Chapter 11 costs, litigation expenses and settlements.

The company said it had operating income for the year of $168.5 million, down 1 percent from $170.2 million last year.

Revenue for the year rose 8 percent, to $855.8 million from $789.9 million in 1986.

Most of the Dalkon Shield liability claims were charged to fourth-quarter earnings, which left Robins with a loss of $1.7 billion for the last three months of 1987 compared with a $26 million ($1.08) profit for the same period last year. Sales for the quarter were $235 million, up 11 percent from $210.8 million a year ago.

■ **Hadron Inc.,** a professional services and telecommunications company based in Fairfax, yesterday reported that it earned $302,021 (2 cents) in its third quarter ended Dec. 31, down slightly from $333,979 (2 cents) for the same period last year.

Hadron officials said the decline was due to delays in the startup and funding of contracts it had already received.

Revenue in the quarter fell 10 percent, to $6.3 million from $7 million a year earlier.

In the first nine months of its fiscal year, Hadron had a $1 million profit (7 cents) on revenue of $19.7 million, up 8 percent from profits of $892,020 (7 cents) on revenue of $18.3 million for the same period last year.

■ **Diversified Retail Group Inc.** of Rockville, which owns a chain of athletic footwear and confectionery stores in the region, yesterday reported a loss of $8,525 in its third quarter ended Dec. 31, compared with a loss of $3,661 for the same period last year.

The company said that the loss was typical for the season in the footwear industry, in which sales are generally strongest in the spring and summer months.

Revenue for the quarter rose 33 percent over last year, to $2.2 million from $1.6 million.

In the first nine months of its fiscal year, Diversified Retail had a profit of $149,211 (7 cents), up 36 percent from $109,849 (5 cents) a year ago. Revenue in the nine-month period rose 46 percent, to $7.6 million from $5.2 million.

Los Angeles Times

Thursday, June 16, 1988

PR/IN/IM-02

# U.S. Probe Ruined Rival of Wedtech

## Army's Criticisms of Firm Parallel Complaints Wallach Sent to Meese

By ROBERT L. JACKSON and RONALD J. OSTROW,
*Times Staff Writers*

WASHINGTON—A major competitor of the scandal-torn Wedtech Corp. was subjected to a highly unusual federal investigation after Wedtech consultant E. Robert Wallach wrote a series of memos to his close friend Edwin Meese III that strongly denounced the competing defense contractor.

Documents obtained by The Times show that allegations contained in Wallach's memos to Meese bear a striking parallel to language contained in a later report by Army investigators that was highly critical of the Wedtech competitor, Garcia Ordnance Corp. of Houston.

The government investigation was undertaken by the Army's Criminal Investigation Division despite highly favorable reports about the company by military procurement officers who were familiar with the firm's work.

**Firm's Officers Acquitted**

The five-year inquiry resulted in the indictment of a dozen officers of Garcia Ordnance, but 11 of them were acquitted last year in a case that the presiding judge said never should have been brought to criminal court. The troubles eventually caused the once-profitable company to close its doors.

It could not be determined whether Meese, who was counselor to the President at the time, passed along any of Wallach's memos to Army investigators or used any influence to instigate the Garcia investigation. Nor could it be learned whether efforts by Wallach directly led to the extraordinary investigation.

In interviews and court testimony, however, figures in the current Wedtech corruption trial in New York and at least one Army procurement officer involved in the Garcia case have referred to pressure from Washington to investigate competitors of Wedtech.

Mario Moreno, a former Wedtech executive, testified recently in the Manhattan trial that "we asked to have" competing defense contractors "investigated for any skeletons in the closet."

Although he was not asked about Garcia Ordnance specifically, Moreno said that sources close to the White House, including then-Meese deputy James E. Jenkins, informed him of imminent investigations or indictments of competitors.

The office of independent counsel James C. McKay, who is investigating Meese, is known to be aware of the Garcia matter but refused to comment on it. If there is

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## Reagan Wants Special Counsel Probe of Wright

By JIM GERSTENZANG,
*Times Staff Writer*

WASHINGTON—President Reagan, in his first on-the-record comments on the internal House investigation of Speaker Jim Wright (D-Tex.), said Wednesday that an independent counsel should be called in to conduct the sensitive investigation into money Wright earned from the sale of his book and allegations about other activities.

"I think everyone would feel that it was more proper if it was done by an investigator outside—an appointed investigator," Reagan said.

In an interview in the Oval Office with The Times and six foreign newspapers, Reagan also gave strong

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